

## PART I

### SHORT TITLE AND INTERPRETATION

#### 1. Short title

This Ordinance may be cited as the Legal Practitioners Ordinance.

#### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"accountant's report" (會計師報告) means a report delivered in accordance with the provisions of section 8;

"Association" (聯營組織) means an Association registered under Part IIIA;

"Bar Council" (執委會) means the Council of the Hong Kong Bar Association;

"barrister" (大律師) means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice;

"client" (當事人), except in relation to non-contentious business, includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs

"contentious business" (爭訟事務) includes any business done by a solicitor in any court, whether as a solicitor or as an advocate;

"costs" (訟費、事務費) includes fees, charges, disbursements, expenses and remuneration;

"Costs Committee" (事務費委員會) means the Costs Committee appointed under section 74;

"Council" (理事會) means in relation to the Law Society the council of the Society elected in accordance with the provisions of its articles of association;

"Council of the Society of Notaries" (公證人協會理事會) means the Council of Management of that society appointed in accordance with the provisions of its articles of association;

"Court" (法院) means the Court of First Instance;

"employee" (僱員) includes a former employee;

"foreign firm" (外地律師行) means a law firm or sole practitioner that is registered as a foreign firm under Part IIIA;

"foreign jurisdiction" (外地司法管轄區) means a jurisdiction other than Hong Kong;

"foreign law" (外地法律) means the law of a foreign jurisdiction;

"foreign lawyer" (外地律師) means a person registered as a foreign lawyer under Part IIIA;

"Hong Kong firm" (香港律師行) means a law firm in which -

(a) all of the partners are solicitors; or

(b) the sole practitioner of which is a solicitor;

"non-contentious business" (非爭訟事務) includes any business connected with sales, purchases, leases, mortgages and other matters of conveyancing;

"notary public" (公證人) means a person who is registered on the register of notaries public and who, at the material time, is not suspended from practice;

"Postgraduate Certificate in Laws" (法學專業證書) means a Postgraduate Certificate in Laws awarded by the University of Hong Kong, the City University of Hong Kong or the City Polytechnic of Hong Kong;

"practising certificate" (執業證書) means-

(a) a certificate issued by the Society under section 6;

(b) a certificate issued by the Bar Council under section 30; and

(c) a certificate issued by the Society of Notaries under section 40E;

"qualified person" (合資格人士) means a person qualified for admission as a solicitor;

"register of notaries public" (公證人註冊紀錄冊) means the register kept by the Registrar in accordance with the provisions of section 40C;

"Registrar" (司法常務官) means the Registrar of the High Court and any senior deputy registrar, deputy registrar or assistant registrar of the High Court;

"roll of barristers" (大律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 29;

"roll of solicitors" (律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 5;

"Society and Law Society (律師會) mean The Law Society of Hong Kong;

"Society of Notaries" (公證人協會) means the body known as The Hong Kong Society of Notaries incorporated with limited liability under the Companies Ordinance (Cap. 32) and having among its objects the promotion of proper professional standards among notaries public, the regulation of the practice of notaries public and the performance or discharge of such duties or responsibilities as may be conferred on it under this Ordinance;

"solicitor" (律師) means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice;

"trainee solicitor contract" (實習律師合約) means a contract in writing, whether entered into before or after the commencement of this Ordinance, under which a person is employed as an articulated clerk or trainee solicitor for the purpose of being admitted as a solicitor;

"unqualified person" (不合資格人士) means a person who is not a solicitor.

- (1A) In this Ordinance, a reference to the Department of Justice shall, in relation to any period of time before 1 July 1997, be deemed to be a reference to the then Legal Department.
- (2) For the avoidance of doubt, it is hereby declared that any conduct of a trainee solicitor or employee of a solicitor which would reasonably be regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute shall be deemed misconduct.
- (3) Any rules made under section 73(1)(d) or (f) shall, subject to section 73(3) and unless the context otherwise requires, apply to a qualified person as they apply to a solicitor.

## **12. Findings of Solicitors Disciplinary Tribunal**

- (1) An order made by a Solicitors Disciplinary Tribunal shall include a statement of its findings in relation to the facts of the case and shall be signed by the chairman or by a member authorized by the Tribunal.
- (2) A signed copy of an order of a Tribunal in relation to a solicitor shall be filed with the Registrar who shall enter a note of the order on the roll of solicitors in connection with the name of the solicitor and, where the order so directs, the Registrar shall strike off the name and shall publish an order for suspension or striking off in the Gazette within 14 days after receiving a copy of the order.
- (2A) A signed copy of an order of a Tribunal in relation to a foreign lawyer shall be filed with the Secretary General of the Society and, where the order so directs, the Secretary General shall publish an order for suspension or cancellation of the registration in the Gazette within 14 days after receiving a copy of the order.
- (3) The Tribunal that heard the matter or a Tribunal constituted for the purpose by the Tribunal Convenor may, on the application of a party against whom an order for payment is made, order that payment may be paid by instalments or be deferred for a period the Tribunal considers appropriate.
- (4) An application for an order for payment by instalments, or for the deferring of payment, may be made at the hearing or, within 14 days after the date of the order for payment, by notice in writing to the Tribunal Convenor and to all parties who were represented at the Tribunal hearing.
- (5) On receipt of a notice under subsection (4), the Tribunal Convenor shall, within 14 days, notify the applicant and the other parties of the date on which the application will be heard by a Tribunal.
- (6) There is no right of appeal from the decision of the Tribunal on an application under subsection (4).
- (7) Payment of an amount ordered to be paid by the Tribunal may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the chairman or other authorized member of the Tribunal and the rules of the Court, so far as applicable, apply to the order.
- (8) No order under subsection (7) shall be enforced until after the 14 days referred to in subsection (4) has elapsed or until after the Tribunal has made its decision under subsection (3).
- (9) A signed copy of every order made by a Tribunal under section 10 shall be filed with the Secretary of the Society of Notaries within 14 days after it is made by the Tribunal.

## **13. Appeal and saving**

- (1) Subject to section 12(6), an appeal against any order made by a Solicitors Disciplinary Tribunal shall lie to the Court of Appeal and the provisions of Order 59 of the Rules of the High Court (Cap. 4 sub. leg.) shall apply to every such appeal save that the time for serving notice of motion of appeal shall be 21 days from the date of the decision and not 6 weeks as provided in the said Order.
- (2) Subject to subsection (2A), in any appeal under subsection (1) the Society shall be the respondent.
- (2A) The Council may, with leave of the Court of Appeal, appeal an order of a Solicitors Disciplinary Tribunal under subsection (1), in which case the Society shall be the appellant and the person whose conduct was the subject of the inquiry by the Solicitors Disciplinary Tribunal shall be the respondent.

- (3) Nothing herein contained shall affect the jurisdiction of the Court under sections 3(2) and 45.
- (4) The hearing of every appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal may otherwise direct.

### **13A. Publication of findings of Solicitors Disciplinary Tribunal**

- (1) Unless, on application by the solicitor, the Court of Final Appeal, the Court of Appeal or the Solicitors Disciplinary Tribunal otherwise orders, the Society may, after the expiry of the time for filing an appeal under section 13, or, if such an appeal has been made, after the appeal is finally determined, as the case may be, publish a summary of the finding and order of a Solicitors Disciplinary Tribunal and the name of the solicitor who was the subject of the finding and order in any publication produced by, or at the direction of, the Society.
- (2) For the purposes of subsection (1), an appeal to the Court of Appeal shall be deemed to be finally determined when the earliest of the following events occurs, whichever is applicable in the circumstances –
  - (a) when the appeal to the Court of Appeal is withdrawn or abandoned;
  - (b) when the specified period expires without an application for leave to appeal having been made to the Court of Appeal;
  - (c) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Appeal –
    - (i) when the application is withdrawn or abandoned;
    - (ii) if the application is refused, when the specified period expires without an application for leave to appeal having been made to the Court of Final Appeal; or
    - (iii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of; or
  - (d) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Final Appeal –
    - (i) when the application is withdrawn, abandoned or refused; or
    - (ii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of.
- (3) In subsection (2) –

“application for leave to appeal” (上訴許可申請) means an application made to the Court of Appeal or the Court of Final Appeal under section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) for leave to appeal to the Court of Final Appeal from a judgment of the Court of Appeal;

“specified period” (指明限期) –

  - (a) in the case of an application for leave to appeal made to the Court of Appeal, means –
    - (i) subject to subparagraph (ii), the period of 28 days within which the notice of motion referred to in section 24(2) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or

- (ii) if, on an application made within the 28-day period referred to in subparagraph (i), the Court of Appeal extends that period, the period as so extended; or
- (b) in the case of an application for leave to appeal made to the Court of Final Appeal, means –
  - (i) subject to subparagraph (ii), the period of 28 days within which the notice of motion referred to in section 24(4) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or
  - (ii) if, on an application made within the 28-day period referred to in subparagraph (i), the Court of Final Appeal extends that period, the period as so extended.

14. (Repealed)

15. (Repealed)

**16. Restrictions on powers to strike names off roll**

- (1) No solicitor shall be liable to have his name struck off the roll of solicitors on account of any failure to comply with such requirements with respect to employment as a trainee solicitor as may be prescribed by the Chief Justice or on account of any defect in his admission and enrolment, unless the application to strike his name off the roll of solicitors is made within 12 months after the date of his enrolment:

Provided that this subsection shall not apply in any case where fraud is proved to have been committed in connection with the failure or defect.

- (2) No solicitor shall be liable to have his name struck off the roll of solicitors by reason only that-
  - (a) a solicitor who employed him or acted as his principal for the whole term or such part of a term of a trainee solicitor contract as may be prescribed by the Chief Justice has neglected or omitted to take out a practising certificate in accordance with the provisions of section 6; or
  - (b) the name of a solicitor who employed him as a trainee solicitor or acted as his principal for any period has after the termination of that period been struck off the roll of solicitors.

**17. Council may inspect proceedings in bankruptcy**

The Council shall be entitled, without payment of any fee, to inspect the file of proceedings in bankruptcy relating to any solicitor or foreign lawyer against whom proceedings in bankruptcy have been taken, and to be supplied with office copies of the proceedings on payment of the usual charges for such copies.

**18. Winding-up, etc. of business of solicitors struck off or suspended**

- (1) The Court may make an order for the winding-up of the business of any solicitor who is struck off the roll of solicitors or of any foreign lawyer whose registration is cancelled in such terms and appointing such solicitor or firm of solicitors or the Official Receiver under the Bankruptcy Ordinance (Cap. 6) or both as it thinks fit for that purpose.

- (2) The Court may make an order appointing any solicitor or firm of solicitors or the Official Receiver or both to manage the business of any solicitor, whose practising certificate is suspended, for the duration of such suspension.
- (3) The Court may make an order appointing a solicitor, firm, foreign lawyer, foreign firm, the Officer Receiver or any combination of them to manage the business of a foreign lawyer whose registration is suspended, for the duration of the suspension.

## **19. Removal from roll**

- (1) Upon reasonable cause being shown to the Council by a solicitor the Council may direct the Registrar to remove the name of such solicitor from the roll of solicitors and the Registrar shall thereupon remove such name from the roll of solicitors.
- (1A) Upon reasonable cause being shown to the Council by a foreign lawyer or foreign firm, the Council may direct the Secretary General of the Society to cancel the registration of the foreign lawyer or foreign firm and the Secretary General shall then cancel the registration.
- (2) With effect from the date of removal of a name under this section the person whose name is so removed shall cease to be a solicitor.
- (3) Upon application being made for removal or cancellation as aforesaid the Council may advertise or require the solicitor, foreign lawyer or foreign firm to advertise the application inviting any person who objects thereto to make objection to the Council.
- (4) Where the Registrar is satisfied that a person who was admitted as a solicitor under section 3(1AD) before the repeal of that provision by the Legal Practitioners (Amendment) Ordinance 1994 (60 of 1994) would no longer be qualified under paragraph (a) of that provision if it were still in force, he shall, unless the person has become qualified otherwise under this Ordinance, remove his name from the roll of solicitors.
- (5) Without prejudice to the generality of subsection (1), where a person admitted under section 3(1AB) before that and related provisions ceased to have effect by virtue of section 75(2) does not commence practice as a solicitor within a period of 12 months after his admission, it shall be a cause for the removal of his name from the roll of solicitors under this section.

## **20. Restrictions on employing trainee solicitors**

- (1) No person who has not at some time been in continuous practice as a solicitor in Hong Kong for a period of 5 years shall, without the special leave in writing of the Society, employ a trainee solicitor or act as his principal.
- (2) No person shall employ or act as principal for more than 2 trainee solicitors at the same time.
- (3) No person shall employ a trainee solicitor or act as his principal unless he is practising as a solicitor on his own account or in partnership, without the special leave in writing of the Society.
- (4) If any solicitor employs or acts as principal for a trainee solicitor in contravention of any of the provisions of subsection (1), (2) or (3), the Council may terminate the trainee solicitor's contract upon such terms as it thinks fit.
- (4A) It is not a contravention of subsection (1), (2) or (3) for a person other than a solicitor to employ a trainee solicitor so long as -
  - (a) the trainee solicitor is assigned to a solicitor who acts as his principal;

- (b) the solicitor who acts as principal is qualified under and complies with subsections (1), (2) and (3); and
  - (c) the solicitor is employed by the same person as the trainee solicitor.
- (5) Any-
- (a) solicitor; or
  - (b) qualified person,
- serving in the-
- (i) Department of Justice; or
  - (ii) the Legal Advisory and Conveyancing Office of the Buildings and Lands Department; or
  - (iia) the Land Registry; or
  - (iib) the Companies Registry; or
  - (iii) Legal Aid Department; or
  - (iv) Official Receiver's Office; or
  - (v) Intellectual Property Department

of the Government shall, for the purpose of this section, be deemed to be practising as a solicitor on his own account; and this subsection shall apply in relation to periods before as well as periods after the commencement of the Legal Practitioners (Amendment) Ordinance 1982.

- (6) (Repealed)
- (7) (Repealed)

**21. Power to prohibit employing trainee solicitors**

- (1) Where the Society refuses to issue a practising certificate to a solicitor under section 6, the Council may by notice in writing to that solicitor prohibit him from employing a trainee solicitor or acting as the principal of a trainee solicitor.
- (2) (Repealed)

**22. Power to discharge trainee solicitor contracts in certain cases**

If either-

- (a) during the term of a trainee solicitor contract a trainee solicitor has been continuously absent from the place of business of his principal for a period of 3 months or such longer period as may be prescribed by the Council except for such reason as may be prescribed by the Council; or
- (b) the Council is for any other reason of the opinion that a trainee solicitor contract ought to be terminated,

the Council may, on application of the solicitor, the trainee solicitor or any other person, terminate the trainee solicitor contract on such terms as it shall think fit and may determine what, if any, of the period of employment of the trainee solicitor shall be effective for the purposes of this Ordinance.

**23. Termination of trainee solicitor contracts in cases of bankruptcy, etc.**

If a solicitor who employs a trainee solicitor or acts as his principal becomes bankrupt before the expiration of the trainee solicitor contract or is imprisoned for debt and remains in prison for more than 21 days, the Court, on the application of any person, may order the trainee solicitor contract to be terminated or to be assigned to another solicitor on such terms and in such manner as the Court thinks fit.

**24. Society's general right of audience**

The Society shall have a general right of audience by any member of the Society appointed for that purpose by the Society or by any counsel, before-

- (a) a Solicitors Disciplinary Tribunal; and
- (b) the Court on the hearing of any matter under this Ordinance that does not solely affect barristers,

and in any such case, whether the Society has or is seeking audience or not, the Society shall be served with a copy of every necessary document filed with the Registrar.

**25. Expenses of Solicitors Disciplinary Tribunal and of Society**

- (1) The expenses incurred by-
  - (a) a Solicitors Disciplinary Tribunal; and
  - (b) the Society, in connection with proceedings before a Solicitors Disciplinary Tribunal and any appeal under section 13,may be paid to the Society out of general revenue upon a certificate issued by the Secretary for Justice.
- (2) The Secretary for Justice shall only issue a certificate under subsection (1) if he is satisfied that-
  - (a) the expenses were necessarily incurred by the Solicitors Disciplinary Tribunal or the Society, as the case may be, in exercise of the powers or duties conferred or imposed by this Ordinance;
  - (b) the amount of such expenses is reasonable; and
  - (c) the expenses could not reasonably be recovered from the person whose conduct is the subject of the proceedings before the Solicitors Disciplinary Tribunal or the Court of Appeal, as the case may be.
- (3) In this section, "expenses" includes witnesses' expenses and fees, counsel's fees, solicitor's fees, auditor's fees and other charges and disbursements.

**26. Statutory provisions to prevail over Society's articles**

In the case of any inconsistency between the provisions of this Ordinance and the Memorandum and Articles of Association of the Society the provisions of this Ordinance shall prevail.



## PART IIA

## CIRCUMSTANCES IN WHICH LAW SOCIETY MAY INTERVENE

## 26A. Circumstances in which powers conferred by Schedule 2 exercisable

- (1) Subject to subsection (2), the powers conferred by Schedule 2 shall be exercisable where -
- (a) the Council has reason to suspect dishonesty on the part of -
    - (i) a solicitor or foreign lawyer; or
    - (ii) an employee or a trainee solicitor of a solicitor or a foreign lawyer; or
    - (iii) the personal representatives of a deceased solicitor or foreign lawyer, in connection with that solicitor's or foreign lawyer's practice or in connection with any trust of which that solicitor or foreign lawyer immediately before the date of his death or formerly was a trustee,

and the Council considers the exercise of those powers is in the interests of the public or the clients of the solicitor or foreign lawyer;
  - (b) the Council considers that there has been undue delay on the part of the personal representatives of a deceased solicitor or foreign lawyer who immediately before his death was practising as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name in connection with that solicitor's or foreign lawyer's practice or in connection with any controlled trust;
  - (c) the Council is satisfied that a solicitor or foreign lawyer has failed to comply with rules made by virtue of section 73(1)(b) or 73A;
  - (d) a solicitor or foreign lawyer has become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6);
  - (e) a solicitor or foreign lawyer has been committed to prison in any civil or criminal proceedings;
  - (f) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name is incapacitated by illness or accident to such an extent as to be unable to attend to his practice;
  - (g) the powers conferred by section 10D of the Mental Health Ordinance (Cap. 136) (emergency powers) or section 11 of that Ordinance (appointment of committee) have been exercised in respect of a solicitor or foreign lawyer;
  - (h) the name of a solicitor has been removed from or struck off the roll or a solicitor has been suspended from practice or the registration of a foreign lawyer is cancelled or suspended;
  - (i) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name has abandoned his practice;
  - (j) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name is incapacitated by age to such an extent as to be unable to attend to his practice;

- (k) any power conferred by this Part and Schedule 2 has been exercised by virtue of paragraph (a) in relation to a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name and he has acted as a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name within the period of 18 months beginning with the date on which it was so exercised;
  - (l) the Council is satisfied that a person has acted as a solicitor at a time when he did not have a practising certificate which was in force;
  - (m) the Council is satisfied that a solicitor has failed to comply with any condition, subject to which his practising certificate was granted or otherwise has effect, to the effect that he may act as a solicitor only -
    - (i) in employment which is approved by the Council in connection with the imposition of that condition;
    - (ii) as a member of a partnership which is so approved; or
    - (iii) in any specified combination of those ways;
  - (n) the Council is satisfied that a solicitor or foreign lawyer has failed to make satisfactory arrangements within 21 days from the date of the closure of his practice.
- (2) The powers conferred by Schedule 2 shall only be exercisable under subsection (1)(c), (j), (k), (l) and (m) if the Council has given the solicitor notice in writing that the Council is satisfied that he has failed to comply with rules specified in the notice and also (at the same or any later time) notice that the powers conferred by Schedule 2 are accordingly exercisable in his case.
- (3) In this Part and Schedule 2 -
- "controlled trust", in relation to a solicitor or foreign lawyer, means a trust of which he is a sole trustee or co-trustee only with one or more of his partners, employees or trainee solicitors;
- "trust" includes an implied or constructive trust and a trust where the trustee has a beneficial interest in the trust property, and also includes the duties incidental to the office of a personal representative, and "trustee" shall be construed accordingly.

**26AA. (Repealed)**

**26B. Death of sole solicitor or foreign lawyer**

On the death of a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name sections 2, 3 and 4 of Schedule 2 shall apply to the client accounts of his practice.

**26C. Undue delay by solicitors or foreign lawyers in connection with clients' instructions**

The powers conferred by Schedule 2 shall also be exercisable, subject to sections 1(4) and 8(3) of that Schedule, where -

- (a) a complaint is made to the Council that there has been undue delay on the part of a solicitor or foreign lawyer in connection with any matter in which the solicitor or his firm or the foreign lawyer or his firm was instructed on behalf of a client or with any controlled trust; and

- (b) the Council by notice in writing invites the solicitor or foreign lawyer to give an explanation within a period of not less than 8 days specified in the notice; and
- (c) the solicitor or foreign lawyer fails within that period to give an explanation which the Council regards as satisfactory; and
- (d) the Council gives notice of the failure to the solicitor or foreign lawyer and (at the same or any later time) notice that the powers conferred by Schedule 2 are accordingly exercisable.

**26D. Powers conferred by Schedule 2 exercisable after death of solicitor**

- (1) Where the powers conferred by Schedule 2 are exercisable in relation to a solicitor or foreign lawyer, they shall continue to be exercisable after his death or after his name has been removed from or struck off the roll (in the case of a solicitor) or his registration is cancelled or suspended (in the case of a foreign lawyer).
- (2) The references to the solicitor or his firm or the foreign lawyer or his firm in sections 1(1), 2(2) and (3), 3, 7(1) and (5) and 8(1) of Schedule 2 include, in any case where the solicitor or foreign lawyer has died, references to his personal representatives.

## **PART III**

### **BARRISTERS**

#### **27. Power of Court to admit barristers**

- (1) Subject to subsection(2), the Court may, in such manner as may be prescribed by the Chief Justice, admit as a barrister of the High Court in Hong Kong, a person whom it considers a fit and proper person to be a barrister, provided such person has —
  - (a) complied with the requirements;
  - (b) passed the examinations; and
  - (c) paid the fees,prescribed by the Bar Council.
- (2) The Court shall not admit a person under subsection (1) unless it is satisfied that that person —
  - (a) is not in practice as a solicitor either on his own account or as a partner or salaried employee in a firm of solicitors practising in Hong Kong; and
  - (b) satisfies one of the following requirements —
    - (i) has resided in Hong Kong for at least 3 consecutive months immediately before the date of his application for admission;
    - (ii) has been ordinarily resident in Hong Kong for at least 7 years;
    - (iii) has been physically present in Hong Kong for at least 180 days of each of at least 7 years within the 10 years immediately preceding the date of his application for admission.
- (3) If at the time of his admission under subsection (1) the person is a solicitor, the Registrar shall remove the person's name from the roll of solicitors.
- (4) Notwithstanding that a person does not satisfy all the requirements specified in subsections (1) and (2)(b), where the Court considers that he is a fit and proper person to be a barrister and is satisfied that he has —
  - (a) the qualification acquired outside Hong Kong to engage in work that would, if undertaken in Hong Kong, be similar to that undertaken by a barrister in the course of ordinary practice as a barrister in the High Court or Court of Final Appeal; and
  - (b) substantial experience in advocacy in a court,the Court may admit such person as a barrister under this section for the purpose of any particular case or cases and may impose such restrictions and conditions on him as it may see fit.
- (5) The Court may, when admitting a person as a barrister, sit in chambers.

27A. (Repealed)

**28. Formalities for admission as a barrister**

Except as may be prescribed by the Chief Justice, no person shall be admitted as a barrister unless he has deposited with the Registrar documentary evidence together with an affidavit showing the manner in which he satisfies the requirements specified in section 27(1) and (2).

**29. Roll of barristers**

- (1) The Registrar shall keep a roll of all barristers admitted by the Court under sections 27 and 27A and shall have custody of the roll of barristers and of all documents relating thereto and shall allow any person to inspect the roll of barristers during office hours without payment.
- (2) The registrar, upon production of a certificate of admission signed by a Judge and upon payment to the Registrar of such fee as may be prescribed by the Chief Justice, shall enter upon the roll of barristers the name of the person enrolled.
- (2A) A barrister who was admitted pursuant to section 27(1) or section 27A may —
  - (a) apply by motion to have his name removed from the roll of barristers; and
  - (b) where he has had his name removed under paragraph (a), on giving at least 7 days' notice to the Bar Council, apply by motion to have his name restored to the roll of barristers.
- (2B) A barrister who was admitted pursuant to section 27(4) for a particular case or cases shall, on completion of such case or cases including any appeal relating thereto, be deemed to have had his name removed from the roll of barristers.
- (2C) Where a barrister has had his name removed from the roll of barristers under subsection (2A) or (2B), he shall forthwith surrender to the Bar Council any current practising certificate.
- (3) (Repealed)

**30. Practising certificates - barristers**

- (1) The Bar Council, upon application in writing by a barrister and upon payment of such fee as may be prescribed by the Bar Council and upon being satisfied in such manner as may be prescribed by the Bar Council that the person to whom the application relates is qualified to practise as a barrister or is qualified to practise to a limited extent under section 31 (2), shall issue to the applicant a practising certificate as a barrister in such form as may be prescribed by the Bar Council for the period of one calendar year from 1 January next following the date of the application:

Provided that-

- (a) the Bar Council, in its absolute discretion and upon such condition as it may consider necessary, may permit the application for a practising certificate to be made under this subsection at any time and upon such application may issue to the applicant a practising certificate for any period not exceeding one calendar year and ending on 31 December in any year; and

- (b) where the name of a barrister is removed from or struck off the roll of barristers, the practising certificate of that barrister shall automatically determine without any entitlement to any refund of the prescribed fee or of any part thereof.
- (2) The publication in the Gazette by the Bar Council of a list of the names and addresses of those barristers who have obtained practising certificates for the period therein stated shall be prima facie evidence that each person named therein is a person qualified under section 31 to practise as a barrister and to whom a practising certificate for the period specified in such list has been issued under this section and the absence from any such list of the name of any person shall be prima facie evidence that such person is not so qualified.
- (3) A practising certificate may only be issued to an applicant who has paid to the Hong Kong Bar Association —
  - (a) except where the Bar Council has exempted the applicant therefrom, the membership subscription; and
  - (b) except where the applicant has been admitted as a barrister under section 27(4) and the Bar Council has exempted him therefrom, the premium prescribed for insurance of the applicant under the current master policy for professional indemnity insurance effected by the Hong Kong Bar Association,in respect of the period for which the practising certificate is to be issued.
- (3A) On application by a barrister admitted under section 27(4), the Bar Council may waive part of the membership subscription.
- (4) (Repealed)

### **31. Qualifications for practising as a barrister**

- (1) A barrister shall not be qualified to practise as such—
  - (a) subject to subsection (2), unless he has completed the prescribed qualifying period of active practice;
  - (b) unless he holds a valid practising certificate;
  - (c) having qualified for admission as a barrister by virtue of section 27(1)(a)(i) or (ii) (as that section existed before its repeal by the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000)), unless he continues to be a barrister in England or Northern Ireland or an advocate in Scotland and is not there suspended from practice as such;
  - (d) if he is suspended from practice under section 37;
  - (e) if he is on the roll of solicitors;
  - (f) if he is an employed barrister within the meaning of section 31C(1).
- (2) After the expiry of the first 6 months of the prescribed qualifying period of active practice, a barrister shall be qualified to practise as a barrister to such limited extent as the Bar Council may determine.

**\*31A. Appointment of Senior Counsel**

- (1) The Chief Justice may, after consultation with the chairman of the Bar Council and the president of the Society, appoint as Senior Counsel barristers who satisfy the eligibility requirements of subsection (2).
- (2) A barrister is eligible for appointment as a Senior Counsel if he -
  - (a) has, in the opinion of the Chief Justice, sufficient ability and standing as a barrister, and sufficient knowledge of the law, to be accorded that status; and
  - (b) has the requisite experience; and
  - (c) is practising at the bar in Hong Kong or is practising as an advocate while he holds office as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).
- (3) For the purposes of subsection (2)(b), a barrister has the requisite experience for appointment as a Senior Counsel if he has, for not less than 10 years in aggregate, done one or both of the following -
  - (a) practised at the bar in Hong Kong; or
  - (b) practised as an advocate while he holds office as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).
- (4) The Chief Justice may, after consultation with the chairman of the Bar Council and the president of the Society, appoint a barrister as an honorary Senior Counsel if he -
  - (a) is a member of the academic staff of a faculty or school of law of a university in Hong Kong; or
  - (b) holds office as a Director of Legal Aid or as a Deputy Director or Assistant Director of Legal Aid; or
  - (c) holds office as Official Receiver or an office specified in Part I of Schedule 2 to the Bankruptcy Ordinance (Cap. 6); or
  - (d) holds office as Director of Intellectual Property or an office specified in Part I of Schedule 1 to the Director of Intellectual Property (Establishment) Ordinance (Cap. 412),

and who has, in the Chief Justice's opinion, provided distinguished service to the law of Hong Kong.
- (5) The appointment of a person as a Senior Counsel in an honorary capacity does not confer on the person a right to act as an advocate in proceedings before the courts of Hong Kong and will not accord precedence before the courts.

**31B. Status of visiting Queen's Counsel**

A Queen's Counsel of another jurisdiction who is appearing in legal proceedings before a court in Hong Kong is entitled to use the title, and to be accorded the status, of Senior Counsel for the purposes of those proceedings.

\* Please see the savings and transitional provisions contained in s.3 of Schedule 2 to 94 of 1997, which section is reproduced immediately after s.75.

### **31C. Employed barristers**

- (1) In this section “employed barrister” (受僱大律師) means a barrister who, under a contract of employment, provides legal services exclusively to his employer.
- (2) An employed barrister may apply to the Bar Council for an employed barrister’s certificate if–
  - (a) at any time, he has been issued a practising certificate under section 30; or
  - (b) he has completed the prescribed qualifying period of active practice; or
  - (c) he has been an employed barrister in Hong Kong for at least 12 months immediately preceding the date of his application.
- (3) An employed barrister may be issued an employed barrister’s certificate and the provisions of sections 29(2C) and 30 respecting practising certificates apply to employed barrister’s certificates issued under this section and, for the purposes of this section, references in those sections to a barrister or a practising certificate shall be deemed to be references to an employed barrister and an employed barrister’s certificate respectively.
- (4) The publication in the Gazette by the Bar Council of a list of the names and addresses of those barristers who have obtained employed barrister’s certificates for the period therein stated shall be prima facie evidence that each person named therein is the holder of such a certificate for the period specified in such list, and the absence from any such list of the name of any person shall be prima facie evidence that the person does not hold such a certificate.
- (5) An employed barrister who holds a current employed barrister’s certificate may, on behalf of his employer but for the purpose of obtaining a legal opinion only, instruct a barrister who holds a current practising certificate, without retaining a solicitor.

### **32. (Repealed)**

### **33. Bar Council - general right of audience**

The Bar Council shall have a general right of audience, by any member of the Bar Council appointed for that purpose by the Bar Council or by any other counsel-

- (a) before a Barristers Disciplinary Tribunal; and
- (b) before the Court on the hearing of–
  - (i) any application to the Court for admission and enrolment as a barrister; and
  - (ii) any proceedings in the Court relating to, affecting or touching any matter affecting the qualification or examination of a person seeking to be a barrister or affecting the privileges, restrictions or offences in connection with the professional practice, conduct and discipline of a barrister,

and in any such case, whether the Bar Council has or is seeking audience or not, the Bar Council shall be served with a copy of every necessary document filed with the Registrar.



**\*34. Barristers Disciplinary Tribunal Panel**

- (1) The Chief Justice is required to appoint a Barristers Disciplinary Tribunal Panel consisting of -
  - (a) no fewer than 6 and no more than 15 practising Senior Counsel of Hong Kong; and
  - (b) no fewer than 6 and no more than 20 other practising barristers of at least 7 years' standing; and
  - (c) no fewer than 5 and no more than 25 lay persons who are not, in the opinion of the Chief Justice, in any way connected with the practice of the law.
- (2) A member of the Bar Council is not eligible to be appointed to or remain on the Panel.
- (3) A person appointed to the Panel shall be appointed for a term specified by the Chief Justice not to exceed 5 years but may be reappointed for a further term or terms.
- (4) The Chief Justice shall appoint one of the barristers on the Panel as the Tribunal Convenor for a 3 year term and he may appoint one or more other barristers on the Panel as Deputy Tribunal Convenors for 3 year terms.
- (5) A Deputy Tribunal Convenor designated by the Tribunal Convenor may act in place of the Tribunal Convenor whenever the Tribunal Convenor is prevented from exercising the Tribunal Convenor's functions because of illness, absence from Hong Kong or any other cause.

**35. Complaint about barrister's conduct**

- (1) Where the Bar Council considers that the conduct of a barrister should be inquired into as a result of a complaint being made to it or otherwise, the Bar Council shall submit the matter to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel.
- (2) Where a complaint is made to the Bar Council and the Bar Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Bar Council ought to have done so.
- (3) A matter submitted to the Tribunal Convenor must include or be accompanied by particulars of the conduct that is to be inquired into and by particulars of any associated allegations of misconduct.

**35A. Barristers Disciplinary Tribunal**

- (1) On receiving a submission under section 35, the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel is required to appoint from the Panel -
  - (a) a Senior Counsel; and
  - (b) a barrister who is not a Senior Counsel; and
  - (c) a lay person.
- (2) The persons so appointed constitute a Barristers Disciplinary Tribunal to inquire into the conduct of the barrister concerned.

\* Please see the savings and transitional provisions contained in s.3 of Schedule 2 to 94 of 1997, which section is reproduced immediately after s.75.

- (3) When constituting a Barristers Disciplinary Tribunal, the Tribunal Convenor is also required to appoint one of its members as chairman of the Tribunal.
- (4) A Barristers Disciplinary Tribunal may be constituted by the chairman and by one other member designated by the chairman for the purposes only of -
  - (a) giving directions or making orders for the conduct of an inquiry under section 36; and
  - (b) announcing the findings of the Tribunal with respect to the inquiry.
- (5) A member of a Barristers Disciplinary Tribunal who becomes a member of the Bar Council ceases to be a member of the Tribunal.

### **35B. Sittings of Barristers Disciplinary Tribunal**

- (1) A Barristers Disciplinary Tribunal is required to sit at such places and at such times as the chairman of the Tribunal directs.
- (2) A Barristers Disciplinary Tribunal is required to hold its proceedings in camera, except when the barrister whose conduct is being inquired into requests that the proceedings be open to the public.

### **36. Powers of Barristers Disciplinary Tribunal**

- (1A) A Barristers Disciplinary Tribunal may inquire into the conduct of any person in respect of which it was constituted.
- (1) For the purpose of conducting an inquiry, a Barristers Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters-
  - (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
  - (b) compelling the production of documents;
  - (c) punishing persons guilty of contempt;
  - (d) ordering an inspection of any property;
  - (e) conducting every examination of witnesses; and
  - (f) adjourning any meeting from time to time and from one place to another,

and a summons under the hand of the chairman of a Barristers Disciplinary Tribunal may be substituted for and shall be equivalent to any form of process capable of being issued in any action or suit for compelling the attendance of witnesses or the production of documents and any warrant of committal to prison issued for the purpose of enforcing any such powers must be signed by the chairman but must not authorize the imprisonment of any offender for a period exceeding 1 month.

- (2) The Commissioner of Police and all police officers, officers of the court, gaolers and bailiffs of the court are required to give their utmost assistance to every Barristers Disciplinary Tribunal and to every chairman thereof, in the enforcement of documents, warrants and orders issued in accordance with subsection (1) or otherwise.

- (3) Every member of a Barristers Disciplinary Tribunal shall have the like protection and privileges, in relation to any action or suit brought against him for any act done or omitted to be done in the execution of his duties as such member, as is given by any law to a magistrate acting in the execution of his office.
- (4) All proceedings of a Barristers Disciplinary Tribunal are privileged.
- (5) A Barristers Disciplinary Tribunal constituted to inquire into the conduct of a person may inquire into the conduct of the person, but only if -
  - (a) the person has been given reasonable notice and adequate particulars of that other conduct; and
  - (b) the Tribunal is satisfied that that other conduct is related to the first-mentioned conduct.
- (6) The power conferred by subsection (5) is exercisable only on the application of -
  - (a) the Bar Council in the case of a matter submitted to the Tribunal Convenor under section 35(1); or
  - (b) the Chief Judge in the case of a matter submitted to the Tribunal Convenor under section 35(2).
- (7) Notice is not reasonable for the purposes of subsection (5) if it is less than 7 days.
- (8) A Barristers Disciplinary Tribunal may make such order as to the payment by a party to an inquiry of the costs incurred in conducting the inquiry as it thinks just. Such an order may direct that the costs are to be taxed by a Master of the High Court on a full indemnity basis.

### **37. Disciplinary powers of Barristers Disciplinary Tribunal**

On completion of its inquiry, the Barristers Disciplinary Tribunal may do one or more of the following -

- (a) censure the barrister;
- (b) suspend the barrister from practising for a period it specifies;
- (c) order that the barrister's name be struck off the roll of barristers;
- (d) order the barrister to pay to the complainant an amount not exceeding the amount or amounts paid or payable to the barrister in relation to the complainant's matters in dispute;
- (e) order the barrister to pay a penalty not exceeding \$500,000, which shall be paid into the general revenue;
- (f) order the barrister to pay the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or an amount that the Tribunal considers to be a reasonable contribution towards those costs;
- (g) make any other order it thinks fit.

### **37A. Findings of a Barristers Disciplinary Tribunal**

- (1) An order made by a Barristers Disciplinary Tribunal shall include a statement of its findings in relation to the facts of the case and shall be signed by the chairman or by a member authorized by the Tribunal.

- (2) A signed copy of an order of a Tribunal shall be filed with the Registrar who shall enter a note of the order on the roll of barristers against the name of the barrister and, where the order so directs, the Registrar shall strike off the name and shall publish an order for suspension or striking off in the Gazette within 14 days after receiving a copy of the order.
- (3) The Tribunal that heard the matter or a Tribunal constituted for the purpose by the Tribunal Convenor may, on the application of a party against whom an order for payment is made, order that payment may be paid by instalments or be deferred for a period the Tribunal considers appropriate.
- (4) An application for an order for payment by instalments, or for the deferring of payment, may be made at the hearing or, within 14 days after the date of the order for payment, by notice in writing to the Tribunal Convenor and to all parties who were represented at the Tribunal hearing.
- (5) On receipt of a notice under subsection (4), the Tribunal Convenor shall, within 14 days, notify the applicant and the other parties of the date on which the application will be heard by a Tribunal.
- (6) There is no right of appeal from the decision of the Tribunal on an application under subsection (4).
- (7) Payment of an amount ordered to be paid by the Tribunal may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the chairman or other authorized member of the Tribunal and the rules of the Court, so far as applicable, apply to the order.
- (8) No order under subsection (7) shall be enforced until after the 14 days referred to in subsection (4) has elapsed or until after the Tribunal has made its decision under subsection (3).

### **37B. Appeal to Court of Appeal**

- (1) A person who is the subject of an order under section 37 or 38 may appeal to the Court of Appeal and Order 59 of the Rules of the High Court (Cap. 4 sub.leg.) applies to the appeal except that the time for serving the notice of appeal is 21 days from the date of the decision and not 6 weeks as provided in Order 59.
- (2) In an appeal under this section the Bar Council shall be the respondent.
- (3) The hearing of an appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal otherwise directs.

### **38. Variation of order of the Barristers Disciplinary Tribunal**

- (1) Any barrister who has been suspended from practising or whose name has been struck off the roll may apply to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel to have a Barristers Disciplinary Tribunal constituted for the purpose of hearing his application to vary or discharge the order suspending him or striking his name off the roll.
- (2) No application shall be made under subsection (1)-
  - (a) in the case of an order of suspension, until the expiration of 2 years from the date of such order or of half the period of suspension, whichever is the less; or
  - (b) in the case of an order striking the name of the barrister off the roll, until the expiration of 2 years from the date of such order,

and in either case where such an application has been made and determined, no further application shall be made until the expiration of 2 years from the date of such determination:

Provided that the barrister may at any time apply on the grounds that new material facts have come to light since the making of the order which it is sought to vary or discharge, and where the Tribunal Convenor is of the opinion that such facts should be placed before a Barristers Disciplinary Tribunal, he shall grant such application.

- (3) At the hearing of the application the Barristers Disciplinary Tribunal may-
- (a) reduce the period of suspension; or
  - (b) discharge the order of suspension or the order striking the name of the barrister off the roll, as the case may be; or
  - (c) confirm the original order; and
  - (d) make such order as to costs as it shall see fit.

### **39. Expenses of Barristers Disciplinary Tribunal and of Bar Council**

- (1) The expenses incurred by-
- (a) a Barristers Disciplinary Tribunal; and
  - (b) the Bar Council, in connection with proceedings before a Barristers Disciplinary Tribunal and any proceedings under section 37B,
- may be paid to the Bar Council out of general revenue upon a certificate issued by the Secretary for Justice.
- (2) The Secretary for Justice shall only issue a certificate under subsection (1) if he is satisfied that-
- (a) the expenses were necessarily incurred by the Barristers Disciplinary Tribunal or the Bar Council, as the case may be, in exercise of the powers or duties conferred or imposed by this Ordinance;
  - (b) the amount of such expenses is reasonable; and
  - (c) the expenses could not reasonably be recovered from the barrister whose conduct is the subject of the proceedings before the Barristers Disciplinary Tribunal or the Court of Appeal, as the case may be.
- (3) In this section, "expenses" includes witnesses' expenses and fees, counsel's fees, solicitor's fees, auditor's fees and other charges and disbursements.

## **PART IIIA**

### **FOREIGN LAWYERS AND FOREIGN FIRMS**

#### **39A. Foreign lawyers**

- (1) The Society may register as a foreign lawyer a person who, not being a solicitor who holds a practising certificate or a barrister who holds a practising certificate, is qualified to practise foreign law.
- (2) Solicitor-client privilege exists between a foreign lawyer and his client to the same extent as the privilege exists between a solicitor and his client.
- (3) Where a foreign lawyer becomes bankrupt the registration of the foreign lawyer is automatically cancelled.

#### **39B. Foreign firms**

- (1) The Society may register as a foreign firm a firm -
  - (a) in which all of the partners who intend to practise in Hong Kong are foreign lawyers or the sole practitioner of which is a foreign lawyer; and
  - (b) that intends to have within 2 months after registration, a place of business in Hong Kong for the purpose of practising or advising on foreign law.
- (2) Where a firm was registered as a foreign firm on the basis of an intention referred to in subsection (1)(b) but fails to establish a place of business in Hong Kong within 2 months after its registration, the Society may cancel the firm's registration.

#### **39C. Associations**

- (1) The Society may register as an Association a Hong Kong firm and one or more foreign firms if the Hong Kong firm and the foreign firm or firms have, or intend to have within 2 months after the registration, an agreement under which fees, profits, premises, management or employees are shared between the Hong Kong firm and the foreign firm or firms.
- (2) Where the Hong Kong firm and the foreign firm or firms fail to enter into an agreement referred to in subsection (1) within 2 months after registration of the Association, the Society may cancel the Association's registration.

#### **39D. Hong Kong firms may employ foreign lawyers**

Subject to rules made under section 73(1)(dc), a Hong Kong firm may employ a foreign lawyer.

## PART IV

### NOTARIES PUBLIC

#### 40. [Repealed]

#### 40A. Qualifications for appointment

- (1) The Chief Judge may appoint as a notary public in Hong Kong a person whom he considers to be a fit and proper person to be a notary public and who -
  - (a) satisfies the following requirements -
    - (i) his name has been on the roll of solicitors continuously for the whole of the period of 7 years immediately before the date of his application for appointment;
    - (ii) he has practised as a solicitor for a period or periods in aggregate of not less than 7 years;
    - (iii) he has, within the period of 1 year ending on the date of his application for appointment, passed any examination prescribed by the Council of the Society of Notaries under section 73D; and
  - (b) has complied with any requirements prescribed by the Council of the Society of Notaries under section 73D with respect to persons applying for appointment as a notary public.
- (2) The Chief Judge may designate a judge of the Court to exercise the powers conferred on him under subsection (1) to appoint a notary public.
- (3) For the purposes of subsection (1)(a)(i), a person applying for appointment as a notary public who has, at any time within the period of 7 years ending on the date of his application for appointment, been suspended from practice as a solicitor under section 10(2)(b) shall be regarded as not having been on the roll of solicitors during the whole of the period of that suspension.
- (4) The Chief Judge may, upon application being made to him under this subsection, specify in a particular case a period for the purposes of subsection (1)(a)(iii) other than the period specified in that subparagraph.
- (4A) The Chief Judge may designate a judge of the Court to exercise the powers conferred on him under subsection (4) to specify an alternative period for the purposes of subsection (1)(a)(iii) in a particular case.
- (5) The Chief Justice may make rules prescribing the manner of appointment as a notary public under this section.

#### 40B. Powers of notaries public

- (1) Every notary public, whether a notary public by virtue of registration under this Part as in force immediately before the commencement of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) or a notary public appointed under this Part on or after that commencement, has all the powers which immediately before that commencement were exercisable by a notary public under the law of Hong Kong.
- (2) Without affecting the generality of subsection (1), the reference to powers in that subsection includes a reference to -

- (a) the power to attest, authenticate or certify the due execution of documents;
  - (b) the power to note or protest bills of exchange and to attest, by an act of honour, payment of bills of exchange for honour supra protest;
  - (c) the power to administer oaths, affirmations or declarations.
- (3) Subsection (1) shall not be construed as affecting -
  - (a) any power which is for the time being conferred (either exclusively or inter alia) by or under the law of a country or territory outside Hong Kong on notaries outside the jurisdiction of that country or territory;
  - (b) any power which is for the time being conferred on notaries by the law of nations or which is so conferred by the law of a community, association or group of states established by or formed pursuant to a treaty, convention or other international agreement.
- (4) Where a power described in subsection (3)(a) or (b) is conferred by or under a law so described on notaries of 1 or more specified classes or descriptions, subsection (3) shall be construed and have effect in accordance with that law.
- (5)
  - (a) In subsection (1) "power" (權力) includes functions and duties and that subsection shall be construed and have effect accordingly.
  - (b) The references in subsection (3)(a) to a country shall be construed as including references to part of a country.

#### **40C. Register of notaries public**

- (1) The Registrar shall continue to keep a register of notaries public and shall have the custody of the register and of all documents relating to the register and shall allow any person to inspect the register during office hours without payment.
- (2) The Registrar, upon production of a certificate of appointment signed by the Chief Judge and upon payment to the Registrar and to the Society of Notaries of any fees prescribed by the Chief Justice, shall enter on the register of notaries public the name of the person appointed.
- (3) The Chief Judge may, if he thinks fit, at any time order the Registrar to replace on the register of notaries public the name of a notary public whose name has been removed from or struck off the register of notaries public.

#### **40D. Qualifications for practising as notary public**

- (1) No person shall be qualified to practise as a notary public unless -
  - (a) his name is for the time being on the register of notaries public;
  - (b) his name is for the time being on the roll of solicitors;
  - (c) he is not suspended from practising as a notary public or as a solicitor;
  - (d) except as provided in subsection (2), he is a person who holds a current practising certificate as a notary public; and
  - (e) he is complying with any indemnity rules made by the Council of the Society of Notaries under section 73E or is exempt from complying with them.



- (2) The requirement imposed by subsection (1)(d) does not apply in the case of a person who holds a current practising certificate as a solicitor issued by the Law Society and a current certificate of membership issued by the Society of Notaries.

#### 40E. Practising certificate - notaries public

- (1) On application in writing by a notary public in the month of November in any year, but subject to subsections (2) to (6), the Society of Notaries shall issue to the applicant a practising certificate as a notary public for the period of one calendar year from 1 January next following the date of the application.
- (2) Any application under subsection (1) shall be in a form approved by the Council of the Society of Notaries and shall be accompanied by payment of any fee prescribed by the Council for the issue of a practising certificate.
- (3) A practising certificate issued under subsection (1) shall be in a form prescribed by the Council of the Society of Notaries.
- (4) A practising certificate shall not be issued under subsection (1) unless the applicant has, where necessary, complied with any indemnity rules made by the Council of the Society of Notaries under section 73E or is exempt from them and has paid to the Society of Notaries the membership subscription in respect of the year for which the practising certificate is to be issued.
- (5) Despite subsection (1), the Society of Notaries may, upon such conditions as it thinks fit, permit an application for a practising certificate to be made under this subsection at any time and upon such application may issue to the applicant a practising certificate for any period not exceeding one calendar year and ending on 31 December in the year in which it is issued.
- (6) Despite subsection (1), the Society of Notaries may -
  - (a) refuse to issue a practising certificate on grounds prescribed by the Council of the Society of Notaries;
  - (b) issue a practising certificate to an applicant subject to conditions prescribed by the Council of the Society of Notaries;
  - (c) amend an already issued certificate by adding conditions prescribed by the Council of the Society of Notaries.
- (7) Where the Society of Notaries considers that a notary public has not complied with conditions imposed under subsection (6) it may, after affording the notary public the opportunity to make representations, suspend or cancel the notary public's practising certificate with or without refunding any fee paid in respect of the practising certificate.
- (8) Where the name of a notary public is removed from or struck off the register of notaries public or where a notary public becomes bankrupt, the practising certificate of that notary public shall automatically determine and in any such case no part of the fee paid in respect of the practising certificate shall be repayable.
- (9) The publication in the Gazette by the Society of Notaries of notice containing a list of the names and addresses of those notaries public who have obtained practising certificates for the period stated in the notice shall, until the contrary is proved, be evidence that each person whose name appears in the list is a person qualified under section 40D to act as a notary public and to whom a practising certificate for the period stated in the notice has been issued under this section; and the absence from any such list of the name of any person shall, until the contrary is proved, be evidence that such person is not so qualified.

- (10) Where the Society of Notaries, in the exercise of the powers conferred on it under subsection (6) or (7), refuses to issue a practising certificate, issues a certificate subject to conditions, amends a certificate by adding conditions or suspends or cancels a certificate, the notary public may appeal to the Chief Judge against the decision of the Society of Notaries within 1 month of being notified of it.
- (11) On an appeal to the Chief Judge under subsection (10), he may -
  - (a) affirm the decision of the Society of Notaries;
  - (b) direct the Society of Notaries to -
    - (i) issue a practising certificate to the applicant free from conditions or, if any conditions have been prescribed for the purposes of subsection (6)(b), subject to such of those conditions as he thinks fit;
    - (ii) remove any conditions added to a practising certificate under subsection (6)(c); or
    - (iii) revoke any suspension or cancellation of a practising certificate effected under subsection (7); or
  - (c) remit the matter to the Society of Notaries for reconsideration with such directions as he thinks fit.
- (12) Where the Chief Judge affirms a decision of the Society of Notaries under paragraph (a) of subsection (11) or gives a direction to the Society of Notaries under paragraph (b) of that subsection, the decision of the Chief Judge shall be final.

#### **40F. Discipline of notaries public**

- (1) A notary public shall be liable to be disciplined under this Part if -
  - (a) he has engaged in fraudulent conduct in pursuit of his notarial work;
  - (b) he has engaged in conduct, whether in pursuit of his notarial work or otherwise, which is prejudicial to the administration of justice, or which is dishonest or otherwise discreditable to a notary public, or which is likely to bring the profession of notary public into disrepute;
  - (c) not being exempt from the requirement to comply with a rule made by the Society of Notaries under section 73E, he has failed to comply with that rule; or
  - (d) he has become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).
- (2) A notary public who is so incapacitated by physical or mental illness as to be unable to carry out notarial work shall be liable to be dealt with under this Part in the same manner as if he was liable to be disciplined under this Part, and for the purposes of any proceedings under this Part in relation to such a person references in this Part to the person's conduct shall be read as references to his state of physical or mental health.

#### **40G. Notaries Public Disciplinary Tribunal Panel**

- (1) The Chief Justice shall appoint a Notaries Public Disciplinary Tribunal consisting of -
  - (a) no fewer than 10 and no more than 20 practising notaries public of at least 5 years' standing; and

- (b) no fewer than 5 and no more than 10 lay persons who are not, in the opinion of the Chief Justice, connected in any way with practice as a notary public or the practice of law.
- (2) A member of the Council of the Society of Notaries is not eligible to be appointed to or remain on the Panel.
- (3) A person appointed to the Panel shall be appointed for a term specified by the Chief Justice not to exceed 5 years but may be reappointed for a further term or terms.
- (4) The Chief Justice shall appoint one of the notaries public on the Panel as the Tribunal Convenor for a 3 year term and he may appoint one or more of the other notaries public on the Panel as a Deputy Tribunal Convenor for a 3 year term.
- (5) A Deputy Tribunal Convenor designated by the Tribunal Convenor or the Chief Justice may act in place of the Tribunal Convenor whenever the Tribunal Convenor is prevented from exercising the Tribunal Convenor's functions under this Ordinance because of illness, absence from Hong Kong or any other cause, or if there is or is likely to be any conflict of interest on the part of the Tribunal Convenor.

#### **40H. Complaint about conduct of notaries public**

- (1) Where the Council of the Society of Notaries considers as a result of a complaint being made to it or otherwise that a person who is, or was at the relevant time, a notary public may be liable to be disciplined under this Part it shall submit the matter to the Tribunal Convenor for the purpose of constituting a Notaries Public Disciplinary Tribunal to inquire into the conduct of the person.
- (2) Where a complaint is made to the Council of the Society of Notaries and the Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so.
- (3) A matter submitted to the Tribunal Convenor shall include or be accompanied by particulars of the conduct that is to be inquired into and by particulars of any associated allegations of misconduct.

#### **40I. Notaries Public Disciplinary Tribunal**

- (1) On receiving a submission under section 40H, the Tribunal Convenor shall appoint from the Panel 2 notaries public and one lay person.
- (2) The persons so appointed constitute a Notaries Public Disciplinary Tribunal to inquire into the conduct of the notary public concerned.
- (3) When constituting a Notaries Public Disciplinary Tribunal, the Tribunal Convenor shall also appoint one of its members as chairman of the Tribunal.
- (4) A Notaries Public Disciplinary Tribunal may be constituted by the chairman and by one other member designated by the chairman for the purposes only of -
  - (a) giving directions or making orders for the conduct of any inquiry being held under section 40J;
  - (b) announcing the findings of the Tribunal with respect to the inquiry.
- (5) A member of the Tribunal who becomes a member of the Council of the Society of Notaries ceases to be a member of the Tribunal.
- (6) A Notaries Public Disciplinary Tribunal shall sit at such places and at such times as the

chairman of the Tribunal directs.

- (7) A Notaries Public Disciplinary Tribunal shall hold its proceedings in camera, except when the notary public whose conduct is being inquired into requests that the proceedings be open to the public.

#### **40J. Powers of a Notaries Public Disciplinary Tribunal**

- (1) A Notaries Public Disciplinary Tribunal shall have power to inquire into the conduct of any person in respect of which it was constituted.
- (2) On completion of its inquiry, a Notaries Public Disciplinary Tribunal shall have power to make such order as it thinks fit and any such order may, in particular, include provision for all or any of the following matters -
- (a) striking off the register of notaries public the name of the notary public to whom the inquiry relates;
  - (b) suspending that notary public from practice for such period as the Notaries Public Disciplinary Tribunal thinks fit;
  - (c) permitting the notary public to continue practice, but subject to conditions which may be imposed for up to 3 years;
  - (d) payment by that notary public to the complainant of an amount not exceeding the amount paid or payable to the notary public in relation to the complainant's matters in dispute;
  - (e) payment by that notary public to a fund established under rules prescribed under section 73E of an amount not greater than an amount paid out of the fund in respect of that notary public;
  - (f) payment by that notary public of a penalty not exceeding \$500,000 which shall be paid into the general revenue;
  - (g) censure of that notary public;
  - (h) payment by any party of the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or payment of any amount that the Tribunal considers is a reasonable contribution towards those costs.
- (3) Every order made under subsection (2) shall be filed with the Secretary of the Society of Notaries and shall be available for inspection by any person affected during such hours as the Council of the Society of Notaries may prescribe, and a signed copy of every order shall be filed with the Secretary General of the Law Society within 14 days of its being made.
- (4) An order that may be made under subsection (2) may also be made in respect of a person who was, at the relevant time, a notary public.

#### **40K. Ancillary powers of a Notaries Public Disciplinary Tribunal**

- (1) For the purpose of conducting any inquiry under section 40J, a Notaries Public Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters -
- (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;

- (b) compelling the production of documents;
- (c) punishing persons guilty of contempt;
- (d) ordering an inspection of any property;
- (e) conducting the examination of witnesses; and
- (f) adjourning any meeting from time to time and from one place to another,

and a summons under the hand of the chairman of a Tribunal may be substituted for and shall be equivalent to any form of process capable of being issued in any action or suit for compelling the attendance of witnesses or the production of documents and any warrant of committal to prison issued for the purpose of enforcing any such powers shall be signed by the chairman of the Tribunal but shall not authorize the imprisonment of any offender for a period exceeding 1 month.

- (2) The Commissioner of Police and all police officers, the Commissioner of Correctional Services and all officers of the Correctional Services Department and all officers and bailiffs of the court are required to give their utmost assistance to every Notaries Public Disciplinary Tribunal and to every chairman of such Tribunal in the enforcement of the exercise of any power vested in the Tribunal or chairman, whether conferred by subsection (1) or otherwise.
- (3) Every member of a Notaries Public Disciplinary Tribunal shall have the like protection and privileges, in relation to any action or suit brought against him for any act done or omitted to be done in the execution of his duties as such member, as is given by any law to a magistrate acting in the execution of his office.
- (4) All proceedings of a Notaries Public Disciplinary Tribunal shall be privileged.
- (5) A Notaries Public Disciplinary Tribunal constituted to inquire into the conduct of a person may inquire into other conduct of the person, but only if -
  - (a) the person has been given reasonable notice and adequate particulars of that other conduct; and
  - (b) the Tribunal is satisfied that that other conduct is related to the first-mentioned conduct.
- (6) The power conferred by subsection (5) is exercisable only on the application of -
  - (a) the Council of the Society of Notaries in the case of a matter submitted to the Tribunal Convenor under section 40H(1); or
  - (b) the Chief Judge in the case of a matter submitted to the Tribunal Convenor under section 40H(2).
- (7) Notice is not reasonable for the purpose of subsection (5) if it is less than 7 days.

#### **40L. Findings of a Notaries Public Disciplinary Tribunal**

- (1) An order made by a Notaries Public Disciplinary Tribunal under section 40J(2) shall include a statement of its findings in relation to the facts of the case and shall be signed by the chairman of the Tribunal or by a member authorized by the Tribunal.
- (2) A signed copy of an order of a Tribunal in relation to a notary public shall be filed with the Registrar who shall enter a note of the order on the register of notaries public in connection with the name of the notary public and, where the order so directs, the Registrar shall strike off the name and shall publish an order for suspension or striking off in the Gazette within 14 days after a copy of the order is so filed.

- (3) The Tribunal that heard the matter or a Tribunal constituted for the purpose by the Tribunal Convenor may, on the application of a party against whom an order for payment is made under section 40J(2), order that payment may be paid by instalments or be deferred for a period the Tribunal considers appropriate.
- (4) An application for an order for payment by instalments, or for the deferring of payment, may be made at the hearing or, within 14 days after the date of the order for payment, by notice in writing to the Tribunal Convenor and to all parties who were represented at the Tribunal hearing.
- (5) On receipt of a notice under subsection (4), the Tribunal Convenor shall, within 14 days, notify the applicant and the other parties of a date on which the application will be heard by a Tribunal.
- (6) Payment of an amount ordered to be paid by the Tribunal may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the chairman of the Tribunal or other authorized member of the Tribunal and the rules of the Court, so far as applicable, apply to the order.
- (7) No order under subsection (6) shall be enforced until after the 14 days referred to in subsection (4) have elapsed or until after the Tribunal has made its decision under subsection (3).

#### **40M. Appeal and saving**

- (1) Subject to subsection (2), an appeal shall lie to the Court of Appeal against any order made by a Notaries Public Disciplinary Tribunal and the provisions of Order 59 of the Rules of the High Court (Cap. 4 sub. leg.) shall apply to every such appeal save that the time for serving notice of motion of appeal shall be 21 days from the date of the decision and not 6 weeks as provided in that Order and the decision of the Court of Appeal on any such appeal shall be final.
- (2) Subsection (1) does not apply in relation to any decision of the Tribunal on an application under section 40L(4).
- (3) In any appeal under subsection (1) the Society of Notaries shall be the respondent.
- (4) The hearing of every appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal may otherwise direct.

#### **40N. Winding-up, etc. of business of notaries public struck off or suspended**

- (1) The Court may make an order for the winding-up of the business of any notary public who is struck off the register of notaries public in such terms and appointing such solicitor or firm of solicitors with notarial practice or the Official Receiver under the Bankruptcy Ordinance (Cap. 6) or both as it thinks fit for that purpose.
- (2) The Court may make an order appointing any solicitor or firm of solicitors with notarial practice or the Official Receiver or both to manage the business of any notary public whose practising certificate is suspended, for the duration of the suspension.

#### **40O. Removal from register at request of notary public**

- (1) Upon reasonable cause being shown to the Council of the Society of Notaries by a notary public, the Council may direct the Registrar to remove the name of such notary public from the register of notaries public and the Registrar shall remove such name from the register of notaries public.
- (2) With effect from the date of removal of a name under this section, the person whose name is so removed shall cease to be a notary public.

**40P. Automatic striking-off or suspension of notary public**

- (1) Where the name of a solicitor who is also a notary public is struck off the roll of solicitors by the Registrar under section 12(2) pursuant to an order made by the Solicitors Disciplinary Tribunal under section 10(2)(a), the Registrar shall as soon as practicable after that strike off the register of notaries public the name of that person and shall publish a notice of this fact in the Gazette within 14 days after the striking off the register of notaries public.
- (2)
  - (a) Where a solicitor who is also a notary public is suspended from practice as a solicitor for a period by order of a Solicitors Disciplinary Tribunal under section 10(2)(b), the notary public shall be deemed to be suspended from practice as a notary public for the same period.
  - (b) Where in relation to such a solicitor who is also a notary public a signed copy of the order of the Solicitors Disciplinary Tribunal is filed with the Registrar under section 12(2), the Registrar shall as soon as is practicable after entering a note of the order on the roll of solicitors, enter a note on the register of notaries public of the period of suspension having effect by virtue of paragraph (a); and where the Registrar is directed by the order made by the Solicitors Disciplinary Tribunal to publish the order for suspension of the solicitor in the Gazette he shall also publish in the Gazette a notice of the suspension having effect by virtue of paragraph (a).
- (3)
  - (a) If in relation to a solicitor who is also a notary public and whose name has been struck off the roll of solicitors as provided in subsection (1), an order is made by the Court of Appeal in proceedings under section 13 that the solicitor's name be restored to the roll of solicitors by the Registrar then, subject to any order made in respect of the notary public under section 40J(2), the Registrar shall as soon as is practicable after that restore the name of the notary public to the register of notaries public.
  - (b) If in relation to a solicitor who is also a notary public and who has been suspended from practice as a solicitor as provided in subsection (2), an order is made by the Court of Appeal in proceedings under section 13 that the suspension be set aside, any suspension of that person from practice as a notary public having effect by virtue of subsection (2)(a) shall cease to have effect, and the Registrar shall enter an appropriate note on the register of notaries public accordingly.

**40Q. Society of Notaries' general right of audience**

The Society of Notaries shall have a general right of audience by any of its members appointed by it for that purpose, or by any solicitor or counsel, before -

- (a) a Notaries Public Disciplinary Tribunal; and
  - (b) the Court on the hearing of any matter under this Ordinance that affects notaries public,
- and in any such case, whether the Society of Notaries has or is seeking audience or not, it shall be served with a copy of every necessary document filed with the Registrar.

**40R. Expenses of Notaries Public Disciplinary Tribunal and of Society of Notaries**

- (1) The expenses incurred by -
  - (a) a Notaries Public Disciplinary Tribunal; and
  - (b) the Society of Notaries, in connection with proceedings before a Notaries Public Disciplinary Tribunal and any appeal under section 40M,

may be paid to the Society of Notaries out of general revenue upon a certificate issued by the Secretary for Justice.

- (2) The Secretary for Justice shall only issue a certificate under subsection (1) if he is satisfied that -
  - (a) the expenses were necessarily incurred by the Notaries Public Disciplinary Tribunal or the Society of Notaries, as the case may be, in exercise of the powers or duties conferred or imposed by this Ordinance;
  - (b) the amount of such expenses is reasonable; and
  - (c) the expenses could not reasonably be recovered from the person whose conduct is the subject of the proceedings before the Notaries Public Disciplinary Tribunal or the Court of Appeal, as the case may be.
- (3) In this section, "expenses" (開支) includes witnesses' expenses and fees, counsel's fees, solicitor's fees, auditor's fees and other charges and disbursements.

#### **40S. Statutory provisions to prevail over Society of Notaries' articles**

In the case of any inconsistency between the provisions of this Ordinance and the Memorandum and Articles of Association of the Society of Notaries, the provisions of this Ordinance shall prevail.

#### **40T. Transitional arrangements**

- (1) In this section, "amendment Ordinance" means the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998).
- (2) Unless the context otherwise requires, reference in this or any other Ordinance -
  - (a) to a notary public includes reference to a person who is a notary public by virtue of registration under this Part as in force immediately before the commencement of the amendment Ordinance;
  - (b) to the register of notaries public includes reference to the register kept under this Part as in force immediately before the commencement of the amendment Ordinance;
  - (c) to any order made under this Part includes reference to an order made under this Part as in force immediately before the commencement of the amendment Ordinance.

**41. [Repealed]**

**42. [Repealed]**

**43. [Repealed]**



## PART V

**PRIVILEGES, RESTRICTIONS AND OFFENCES  
IN CONNECTION WITH PRACTICE****44. Penalty for unlawfully practising as a barrister or notary public**

- (1) Any person who-
- (a) not being a qualified barrister, either directly or indirectly, practises or acts as a barrister;
  - (b) not being a qualified notary public, either directly or indirectly, practises or acts as a notary public,
- shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (2) Nothing in this section shall be construed as affecting any provision of the Consular Relations Ordinance (Cap. 259).

**45. Unqualified person not to act as solicitor**

- (1) A person who, by virtue of section 7, is not qualified to act as a solicitor shall not act as a solicitor, or as such sue out any writ or process, or commence, carry on or defend any action, suit or other proceeding, in the name of any other person or in his own name, in any court of civil or criminal jurisdiction or act as a solicitor in any cause or matter, civil or criminal, to be heard or determined before any court or magistrate.
- (2) Any person who contravenes the provisions of this section shall-
- (a) be guilty of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly;
  - (b) be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting; and
  - (c) be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000 and to imprisonment for 2 years.
  - (d) (Repealed)
- (3) (Repealed)

**46. Penalty for pretending to be a solicitor, etc.**

- (1) Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or recognized by law as qualified to act as, a solicitor shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (2) Any person who -
- (a) not being an employee of a solicitor, a barrister or a foreign lawyer, wilfully pretends to be, or takes or uses any title, addition or description implying that he is, such an employee;

- (b) without the authority of a solicitor, a barrister, a foreign lawyer or a trainee solicitor, purports to act with such authority,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.

**47. Unqualified person not to prepare certain instruments, etc.**

- (1) Any unqualified person, not being a barrister or a notary public, who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly-

- (a) draws or prepares any instrument relating to movable or immovable property or to any legal proceeding; or
- (b) draws or prepares any memorial or other document for the purposes of the Land Registration Ordinance (Cap. 128) or the New Territories Ordinance (Cap. 97) or makes any application or lodges any testimony for registration under either of those Ordinances at the Land Registry or at any District Land Registry,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.

- (2) This section shall not extend to-

- (a) any public officer drawing or preparing instruments in the course of his duty;
- (b) any person employed merely to engross or copy any instrument or proceeding; or
- (c) an unqualified person who, while acting in the course of bona fide employment and supervised by a qualified person, draws or prepares any instrument, memorial or other document in the name of the qualified person.

- (3) For the purposes of this section, "instrument" does not include-

- (a) a will or other testamentary instrument; or
- (b) an agreement under hand only; or
- (c) a letter of power of attorney; or
- (d) a transfer of stock containing no trust or limitation thereof.

**48. Unqualified person not to act in preparation of papers for probate, etc.**

- (1) Any unqualified person, not being a barrister or a notary public, who, either directly or as an agent of any person, whether or not that other person is a solicitor, barrister or notary public, takes instructions for or draws or prepares any paper on which to found or oppose a grant of probate or of letters of administration shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence and, without prejudice to any other liability or disability to which he may be subject under this Ordinance or any other enactment, shall be liable on summary conviction to a fine of \$500,000:

- (2) This section does not apply to -

- (a) a public officer who in the course of his duty draws or prepares papers referred to in subsection (1); or

- (b) an unqualified person who, while acting in the course of bona fide employment and supervised by a qualified person, draws or prepares papers referred to in subsection (1) in the name of the qualified person.

**49. Solicitor not to act as agent for unqualified person**

- (1) No solicitor shall wilfully and knowingly-
  - (a) act as agent in any action or in any matter in bankruptcy for any unqualified person; or
  - (b) permit his name to be made use of in any such action or matter upon the account or for the profit of any unqualified person; or
  - (c) (Repealed)
  - (d) do any other act enabling any unqualified person to appear, act or practise in any respect as a solicitor in any such action or matter.
- (2) Where it appears to a Solicitors Disciplinary Tribunal or to the Court that a solicitor has acted in contravention of this section, the Solicitors Disciplinary Tribunal or the Court shall order his name to be struck off the roll of solicitors.
- (3) Where the Court orders the name of a solicitor to be struck off the roll in respect of an offence under this section, it may further order that the unqualified person who was enabled by the conduct of the offender to act or practise as a solicitor shall be imprisoned for any period not exceeding 1 year.

**50. No costs for unqualified person**

No costs in respect of anything done by an unqualified person acting as a solicitor shall be recoverable in any action, suit or matter by any person whomsoever.

**50A. Recovery of moneys in certain cases**

Nothing in section 45(2)(b) or in section 50 shall prevent the recovery of moneys paid or to be paid by a solicitor on behalf of a client in respect of anything done by the solicitor while acting for the client without holding a practising certificate in force provided that such moneys would have been recoverable if that solicitor had held such a certificate in force when so acting.

**50B. Offences in relation to foreign lawyers, foreign firms and Associations**

- (1) A person who offers his services to the public as a practitioner of foreign law commits an offence unless he is a solicitor who satisfies all the requirements set forth in section 7, a barrister or a foreign lawyer.
- (2) A person who is qualified to practise foreign law and who -
  - (a) from within a foreign firm but not as a foreign lawyer, or
  - (b) from within a Hong Kong firm but not as a solicitor or foreign lawyer,
 offers his services to the public as a practitioner of foreign law, does not commit an offence under subsection (1) so long as he does not so offer his services in any 12 month period for more than 3 continuous months or more than 90 days.
- (3) A foreign lawyer who offers his services to the public as a practitioner of foreign law in a capacity other than as a practitioner in a foreign firm or a Hong Kong firm commits an offence.

- (4) A foreign lawyer or foreign firm shall not take a solicitor into partnership or employ a solicitor who holds a practising certificate or a barrister who holds a practising certificate.
- (5) Where a Hong Kong firm and a foreign firm have an agreement as described in section 39C(1) and they are not registered as an Association, the partners or the sole practitioners of each firm commit an offence.
- (6) A person who commits an offence under this section is liable to a fine of \$500,000.

**51. Application of penal provisions to body corporate**

- (1) If any act is done by a body corporate, or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified or recognized by law as qualified to act as a solicitor, the body corporate shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000, and, in the case of an act done by a director, officer or servant of the body corporate, such person shall also be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (2) For the avoidance of doubt, it is hereby declared that in sections 45, 46, 47, 48, 49, 50 and 50B, references to unqualified persons and to persons include references to a body corporate.

**52. Solicitors not to commence or defend actions while in prison**

- (1) No solicitor whilst a prisoner in any prison shall as a solicitor, in his own name or in the name of any other solicitor, sue out any writ or process, or commence, prosecute or defend any action or any matter in bankruptcy.
- (2) Any solicitor commencing, prosecuting or defending any such action or matter in contravention of this section shall be incapable of maintaining any action for the recovery of any costs in respect of any business done by him whilst so confined as aforesaid, and he and any solicitor permitting him to commence, prosecute or defend any such action or matter in his name shall be guilty of contempt of the court in which such action or matter was commenced or prosecuted and may be punished accordingly.

**53. Employment by solicitor or foreign lawyer of persons struck off or suspended**

- (1) No solicitor shall, in connection with his practice as a solicitor, without the written permission of the Society which may be given for such period and subject to such conditions as the Society thinks fit, employ or remunerate any person who, to his knowledge, -
  - (a) is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll of solicitors or is suspended from practising as a solicitor or whose practising certificate has been determined by virtue of section 6(7) in consequence of having become bankrupt; or
  - (b) was a foreign lawyer whose registration was cancelled other than under section 19 and who has not been re-registered or is a foreign lawyer whose registration is suspended.
- (1A) No foreign lawyer shall, in connection with his practice as a foreign lawyer, without the written permission of the Society which may be given for such period and subject to such conditions as the Society thinks fit, employ or remunerate any person who, to his knowledge, was a foreign lawyer whose registration was cancelled other than under section 19 and who has not been re-registered or is a foreign lawyer whose registration is suspended.

- (2) No solicitor or foreign lawyer shall in connection with his practice as a solicitor or foreign lawyer employ or remunerate any person who, to his knowledge, is the subject of an order made by a Solicitors Disciplinary Tribunal under section 10(2)(g) whereby the employment of such person by any solicitor or foreign lawyer is prohibited, while such order is in force.
- (3) No solicitor or foreign lawyer shall, in connection with his practice as a solicitor or foreign lawyer, without written permission of the Society, which may be given for such period and subject to such conditions as the Society may think fit, employ or remunerate any person, who, to his knowledge, has been convicted of a criminal offence involving dishonesty.
- (4) A solicitor or foreign lawyer aggrieved by the refusal of the Society to grant any such permission as aforesaid, or by any conditions attached by the Society to the grant thereof, may appeal to the Chief Judge, in such manner as may be prescribed by the Chief Justice, and on any such appeal the Chief Judge may confirm the refusal or the conditions, as the case may be, or may, in lieu of the Society, grant such permission for such period and subject to such conditions as he thinks fit.
- (5) If any solicitor acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given thereunder, his name shall be struck off the roll or he shall be suspended from practice for such period as a Solicitors Disciplinary Tribunal may think fit.
- (5A) If a foreign lawyer acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given, his registration as a foreign lawyer shall be cancelled or shall be suspended for such period as a Solicitors Disciplinary Tribunal may think fit.
- (6) Any person who, while there is in force in respect of him an order made under section 10(2)(g) prohibiting his employment by any solicitor or foreign lawyer, seeks or accepts any employment by or remuneration from a solicitor or foreign lawyer in connection with his practice as a solicitor or foreign lawyer without previously informing the solicitor or foreign lawyer of that order shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.

#### **54. Penalty on failure to disclose fact of having been struck off, etc.**

- (1) Any person who, whilst he is disqualified from practising as a solicitor by reason of the fact that he has been struck off the roll or is suspended from practising as a solicitor, seeks or accepts employment by a solicitor in connection with that solicitor's practice without previously informing him that he is so disqualified shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (1A) A person whose registration as a foreign lawyer has been cancelled other than under section 19 or suspended and who seeks or accepts employment by a solicitor or foreign lawyer without previously informing the solicitor or foreign lawyer that his registration has been cancelled or suspended commits an offence and is liable to a fine of \$500,000.
- (2) No proceedings under this section shall be commenced except by or with the consent of the Secretary for Justice.

#### **55. Time limit for commencement of certain proceedings**

Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of any offence against section 46, 47, 48, 50B or 54 may be brought at any time within 2 years next after the commission of the offence.

## PART VI

### REMUNERATION OF SOLICITORS

#### Non-contentious Business

##### **56. Agreement for remuneration for non-contentious business**

- (1) Whether or not any rules made under section 74 are in force, a solicitor and his client may, either before or after or in the course of the transaction of any non-contentious business by the solicitor, make an agreement as to the remuneration of the solicitor in respect thereof.
- (2) The agreement may provide for the remuneration of the solicitor by a gross sum, or by commission or percentage or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration therein stipulated for either shall or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees or other matters.
- (3) The agreement shall be in writing and signed by the person to be bound thereby or his agent in that behalf.
- (4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor:

Provided that if on any taxation of costs the agreement is relied on by the solicitor and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the Court, and if on that certificate it appears just to the Court that the agreement should be cancelled, or the amount payable thereunder reduced, the Court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as it thinks fit.

##### **57. Remuneration of a solicitor who is a mortgagee**

- (1) If a mortgage is made to a solicitor, either alone or jointly with any other person, he, or the firm of which he is a member, shall be entitled to recover from the mortgagor in respect of all business transacted and acts done by him or them in negotiating the loan, deducing and investigating the title to the property, and preparing and completing the mortgage, such usual costs as he or they would have been entitled to receive if the mortgage had been made to a person who was not a solicitor and that person had retained and employed him or them to transact that business and do those acts.
- (2) If, whether before or after the commencement of this Ordinance, a mortgage has been made to, or has become vested by transfer or transmission in, a solicitor, either alone or jointly with any other person, and if any business is transacted or acts done by that solicitor, or by the firm of which he is a member, in relation to that mortgage, or the security thereby created or the property comprised thereunder, then he or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or they would have been entitled to receive if the mortgage had been made to and had remained vested in a person who was not a solicitor and that person had retained and employed him or them to transact that business and do those acts.
- (3) In this section, "mortgage" includes any charge on any property for securing money or money's worth.

## Contentious Business

### 58. Power to make agreements

A solicitor may make with his client an agreement in writing as to his remuneration, in respect of any contentious business done or to be done by the solicitor for the client, which provides that the solicitor shall be remunerated either by a gross sum or by salary, or otherwise, and at either a greater or a less rate than that at which he would otherwise have been entitled to be remunerated.

### 59. Miscellaneous provisions

- (1) An agreement such as is referred to in section 58-

- (a) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the solicitor, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof;

Provided that the client shall not be entitled to recover from any other person under any order for the payment of any costs to which the agreement relates more than the amount payable by him to his solicitor in respect thereof under the agreement;

- (b) shall be deemed to exclude any claim by the solicitor in respect of the business to which it relates other than -

- (i) a claim for the agreed costs; or  
(ii) a claim for such costs as are expressly excepted therefrom.

- (2) A provision in any such agreement that the solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as a solicitor, shall be void.

### 60. Enforcement of agreements in respect of contentious business

- (1) No action shall be brought upon any such agreement as is referred to in section 58, but the court may, on the application of any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be, liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect thereof.

- (2) On any such application the court-

- (a) if it is of opinion that the agreement is in all respects fair and reasonable, may enforce it;  
(b) if it is of opinion that the agreement is in any respect unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered thereby to be taxed as if the agreement had never been made;  
(c) in any case, may make such order as to the costs of the application as it may think fit.

- (3) If the business covered by any such agreement is business done, or to be done, in any action, the amount payable under the agreement shall not be received by the solicitor until the agreement has been examined and allowed by a taxing officer of the court, and, if the taxing officer is of opinion that the agreement is unfair or unreasonable, he may require the opinion of the court to be taken thereon and the court may reduce the amount payable thereunder, or order the agreement to be cancelled and the costs covered thereby to be

taxed as if the agreement had never been made.

- (4) When the amount agreed for under any such agreement has been paid by or on behalf of the client or by any person entitled so to do, the person making the payment may at any time within 12 months after payment apply to the court and the court, if it appears to it that the special circumstances of the case require the agreement to be reopened, may, on such terms as may be just, reopen the agreement and may order the costs covered thereby to be taxed and the whole or any part of the amount received by the solicitor to be repaid by him.
- (5) Where any such agreement is made by the client as the guardian or committee of, or as a trustee under a deed or will for, any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the taxing officer of the court, and that officer shall examine the agreement and may disallow any part thereof, or may require the opinion of the court to be taken thereon.
- (6) Any such client as is mentioned in subsection (5), who pays the whole or any part of the amount payable under the agreement without the agreement having been allowed by the taxing officer or by the court, shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the solicitor who accepts the payment may be ordered by the court to refund the amount received by him.

#### **61. Death, incapability, or change of solicitor, etc.**

- (1) If, after some business has been done under an agreement made in pursuance of the provisions of section 58 but before the solicitor has wholly performed it, the solicitor dies or becomes incapable of acting, any party to, or the representative of any party to, the agreement may apply to the court and the court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the solicitor had not died or become incapable of acting:

Provided that the court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done thereunder to be ascertained by taxation, and in that case -

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
  - (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.
- (2) The provisions of subsection (1) shall apply in the event of the client changing his solicitor (as, notwithstanding the agreement, he shall be entitled to do) before the conclusion of the business to which the agreement relates in the same manner as they apply when the solicitor dies or is incapacitated, with this modification, that if an order is made for the taxation of the amount due to the solicitor in respect of the business done under the agreement the court shall direct the taxing officer to have regard to the circumstances under which the change of solicitor has taken place, and the taxing officer, unless he is of opinion that there has been no default, negligence, improper delay or other conduct on the part of the solicitor affording to the client reasonable ground for changing his solicitor, shall not allow to the solicitor the full amount of the remuneration agreed to be paid to him.
- (3) In this section and in sections 60 and 63, "court" means-
  - (a) in relation to an agreement under which any business has been done in any court having jurisdiction to enforce and set aside agreements, any such court in which any of that business has been done;



- (b) in relation to an agreement under which no business has been done in any such court, and under which more than the sum mentioned in section 32 of the District Court Ordinance (Cap. 336) is payable, the Court of First Instance;
- (c) in relation to an agreement under which no business has been done in any such court, and under which not more than the sum mentioned in section 32 of the District Court Ordinance (Cap. 336) is payable, the District Court.

## **62. Agreement excludes taxation**

Subject to the provisions of sections 59, 60 and 61, the costs of a solicitor in any case where any agreement has been made in pursuance of the provisions of section 58 shall not be subject to taxation, nor to the provisions of section 66 with respect to the signing and delivery of a solicitor's bill.

## **63. Form of bill of costs for contentious business**

Where the remuneration of a solicitor in respect of contentious business done by him is not the subject of such an agreement as is mentioned in section 58, the solicitor's bill of costs may at the option of the solicitor either contain detailed items or be for a gross sum:

Provided that-

- (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of 3 months from the date of the delivery to him of the bill, the party chargeable therewith may require the solicitor to deliver to him in lieu thereof a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;
- (b) where an action is commenced on a gross sum bill, the court shall, if so requested by the party chargeable therewith before the expiration of 1 month from the service on that party of the writ or other originating process, order that the bill shall be taxed;
- (c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation, and the solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require.

## **General Provisions Regarding Remuneration**

## **64. General provisions as to remuneration**

- (1) Nothing in section 58, 59, 60, 61 or 62 shall give validity to-
  - (a) any purchase by a solicitor of the interest, or any part of the interest, of his client in any action, suit or other contentious proceeding; or
  - (b) any agreement by which a solicitor retained or employed to prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success in that action, suit or proceeding; or
  - (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or voluntary arrangement with creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).
- (2) A solicitor may take security from his client for his costs to be ascertained by taxation or otherwise.
- (3) Subject to the provisions of any rules of court, upon every taxation of costs with respect to

any contentious business, the taxing officer may-

- (a) allow interest at such rate and from such time as he thinks just on moneys disbursed by the solicitor for the client, and on moneys of the client in the hands of, and improperly retained by, the solicitor;
- (b) in determining the remuneration of the solicitor, have regard to the skill, labour and responsibility involved in the business done by him, the general complexity of the matter and the amount or value of the matter in issue.

**65. Power of Court to order delivery of bill, etc.**

- (1) The jurisdiction of the Court to make orders for the delivery by a solicitor of a bill of costs and for the delivery up of, or otherwise in relation to, any deeds, documents or papers in his possession, custody or power is hereby declared to extend to cases in which no business has been done by him in the Court.
- (2) If a mortgage has been made to, or has become vested by transfer or transmission in, a solicitor, either alone or jointly with any other person, and any business is transacted or acts are done by that solicitor, or by the firm of which he is a member, in relation to that mortgage or the security thereby created or the property comprised thereunder, then he or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or they would have been entitled to receive if the mortgage had been made to and had remained vested in a person who was not a solicitor and that person had retained and employed him or them to transact that business and do those acts.
- (3) In this section and in sections 66, 67 and 68, "solicitor" includes the executors, administrators and assignees of the solicitor in question.

**66. Action to recover costs**

- (1) Subject to the provisions of this Ordinance, no action shall be brought to recover any costs due to a solicitor until 1 month after a bill thereof has been delivered in accordance with the requirements of this section:

Provided that, if there is probable cause for believing that the party chargeable with the costs is about to quit Hong Kong, or become a bankrupt, or to enter into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6), or to do any other act which would tend to prevent or delay the solicitor obtaining payment, the Court may, notwithstanding that 1 month has not expired from the delivery of the bill, order that the solicitor be at liberty to commence an action to recover his costs and may order those costs to be taxed.

- (2) The said requirements are as follows -
  - (a) the bill must be signed by the solicitor, or if the costs are due to a firm, by one of the partners of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and
  - (b) the bill must be delivered to the party to be charged therewith, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling house or last known place of abode,

and where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the solicitor to prove the contents of the bill and it shall be presumed, until the contrary is shown, to be a bill bona fide complying with this Ordinance.

**67. Taxation of bills on application of party chargeable on solicitor or foreign lawyer**

- (1) On the application, made within 1 month of the delivery of a solicitor's bill or a foreign lawyer's bill, of the party chargeable therewith the Court shall, without requiring any sum to be paid into court, order that the bill shall be taxed and that no action shall be commenced thereon until the taxation is completed.
- (2) If no such application is made within the period mentioned in subsection (1), then, on the application of the solicitor or the foreign lawyer or of the party chargeable with the bill, the Court may, upon such terms, if any, as it thinks fit (not being terms as to the costs of the taxation), order-
  - (a) that the bill shall be taxed;
  - (b) that, until the taxation is completed, no action shall be commenced on the bill, and any action already commenced be stayed:

Provided that-

- (i) if 12 months have expired from the delivery of the bill, or if the bill has been paid, or if a verdict has been obtained or a writ of inquiry executed in an action for the recovery of the costs covered thereby, no order shall be made on the application of the party chargeable with the bill except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the taxation as the Court may think fit;
  - (ii) if the bill has been paid, no order under this subsection shall be made where the application for the order is made after the expiration of 12 months from the date of payment of the bill.
- (3) Every order for the taxation of a bill shall require the taxing officer to tax not only the bill but also the costs of taxation and to certify what is due to or by the solicitor in respect of the bill and in respect of the costs of the taxation.
- (4) If after due notice of any taxation either party thereto fails to attend, the taxing officer may proceed with the taxation ex parte.
- (5) Unless -
  - (a) the order for taxation was made on the application of the solicitor or the foreign lawyer and the party chargeable does not attend the taxation; or
  - (b) the order for taxation otherwise provides,

the costs of the taxation shall be paid according to the event of the taxation, that is to say, if one-sixth or more of the amount of the bill is taxed off, the solicitor or the foreign lawyer shall pay the costs, but otherwise the party chargeable shall pay the costs:

Provided that-

- (i) if, in the case of a bill for non-contentious business, not less than half of the amount of the bill before taxation consists of costs for which no scale charge is prescribed, for the reference in this subsection to one-sixth of the amount of the bill there shall be deemed to be substituted a reference to one-fifth thereof;
- (ii) the taxing officer may certify any special circumstances relating to the bill or the taxation thereof to the Court, and the Court may make thereon any such order as it thinks fit respecting the payment of the costs of the taxation.

**68. Taxation application of third parties**

- (1) Where a person other than the person who is the party chargeable with the bill for the purposes of section 67 has paid, or is or was liable to pay, the bill to the solicitor or the foreign lawyer or to the party chargeable with the bill, that person or his executors, administrators or assignees may apply to the Court for an order for the taxation of the bill as if he were the party chargeable therewith, and the Court may make thereon the same order, if any, as it might have made if the application had been made by that party:

Provided that, in cases where the Court has no power to make an order except in special circumstances, the Court may, in considering whether there are special circumstances sufficient to justify it in making an order, take into account circumstances affecting the applicant but which do not affect the party chargeable with the bill.

- (2) If a trustee, executor or administrator has become liable to pay a bill of a solicitor or of a foreign lawyer the Court may, upon the application of any person interested in any property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill, and upon such terms, if any, as it thinks fit, order the bill to be taxed, and may order such payments, in respect of the amount found due to or by the solicitor or the foreign lawyer and in respect of the costs of the taxation, to be made to or by the applicant, or to or by the solicitor or the foreign lawyer, or to the executor, administrator or trustee as it thinks fit:

Provided that in considering any such application the Court shall have regard to-

- (a) the provisions of section 67 as to applications by the party chargeable with a solicitor's bill or a foreign lawyer's bill so far as they are capable of being applied to an application made under this subsection;
- (b) the extent and nature of the interest of the applicant.
- (3) If an applicant under subsection (2) pays any money to the solicitor or the foreign lawyer, he shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the solicitor or the foreign lawyer had.
- (4) On an application made under this section-
- (a) except in special circumstances, no order shall be made for the taxation of a bill which has already been taxed;
- (b) the Court may, if it orders taxation of the bill, order the solicitor or the foreign lawyer to deliver to the applicant a copy of the bill upon payment of the costs of that copy.

**69. General provisions as to taxations**

- (1) Every application for an order for the taxation of a solicitor's bill or a foreign lawyer's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by a solicitor or by a foreign lawyer shall be made in the matter of that solicitor or that foreign lawyer.
- (2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

**70. Charging orders**

Any court in which a solicitor has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the solicitor entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding and may make such orders for the taxation of the said costs and for raising money to pay, or for paying, the said costs out of the said property, as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the solicitor:

Provided that no order shall be made if the right to recover the costs is barred by any statute of limitations.

**71. Revival of order for payment of costs**

Whenever any judgment or order has been made for payment of costs in any action and such action afterwards becomes abated, it shall be lawful for any person interested under such judgment or order to revive such action, and thereupon to prosecute and enforce such judgment or order, and so from time to time as often as any such abatement may happen.

## PART VII

### RULES

#### 72. Power of Chief Justice to make rules

The Chief Justice may make rules-

- (a) in relation to the admission of solicitors and of barristers and the appointment of notaries public-
  - (i) regulating the manner in which applications for admission under sections 4, 27 and 27A shall be made and the forms to be employed in respect thereof;
  - (ii) regulating the procedure and constitution of the Court at the hearing of applications under sections 4, 27 and 27A;
  - (iii) regulating the manner in which applications for appointment under section 40A shall be made and the forms to be employed in respect thereof;
  - (iv) exempting, in any particular case, a person seeking admission under section 4 or 27 or appointment under section 40A from compliance with all or any of the conditions prescribed for such admission or appointment by this Ordinance, subject to such conditions as may appear necessary;
  - (v) providing for the duties of the Registrar in connection with such admissions and appointments;
  - (vi) providing for the forms of the roll of solicitors, the roll of barristers and the register of notaries public, the mode in which they shall be kept and the contents thereof;
  - (vii) prescribing any fees payable in connection with such admissions and appointments;
  - (viii) (Repealed)
  - (ix) (Repealed)
  - (x) regulating the granting of exemption from the provisions of any of such rules and of the compliance with any terms imposed upon the grantees of such exemption and prescribing the form of any statutory declaration evidencing such compliance;
- (b) in relation to the conduct of barristers, to provide for -
  - (i) the making of a complaint to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel;
  - (ii) the conduct of proceedings before a Barristers Disciplinary Tribunal; and
  - (iii) the procedure for making and hearing an application under section 38; and
- (c) generally to prescribe or provide for-
  - (i) any other certificate, form or other document required under this Ordinance;
  - (ii) any other fee which is required to be prescribed under this Ordinance;
  - (iii) the better carrying into effect of the provisions of this Ordinance; and
  - (iv) anything which under this Ordinance is to be or may be prescribed by the Chief Justice.

**72A. Rules for barristers in Hong Kong**

The Chief Justice may make rules in relation to the admission of persons who seek to qualify or have qualified as barristers in Hong Kong-

- (a) regulating the enrolment of students seeking to become barristers in Hong Kong;
- (b) regulating the manner in which pupillage may be served, including applications for pupillage, disqualifications in respect of pupillage, approval and termination of pupillage and the period and requirements of pupillage;
- (ba) regulating the examinations to be passed by students seeking to become barristers in Hong Kong;
- (bb) prescribing the qualifying period of active practice for the purposes of section 31;
- (c) generally for the better control of such students.

**72AA. Power of Bar Council to make rules**

Subject to the prior approval of the Chief Justice, the Bar Council may make rules -

- (a) in respect of the professional practice, conduct and discipline of barristers and pupils;
- (b) for the purpose of harmonizing the relationship of barristers inter se and, with the prior approval of the Council, governing the relationship of solicitors and barristers;
- (c) regulating the issuing of practising certificates to barristers and employed barrister's certificates to employed barristers including, without limiting the foregoing, the fees payable for, the conditions of issue of, the manner of applying for, the period and form of and the publication of the issue and suspension of, such certificates;
- (d) providing for any continuing legal education or training that must be undertaken by barristers and pupils and the consequences of failing to do so;
- (e) providing for the conduct of an inquiry and investigation by a Barristers Disciplinary Tribunal;
- (f) requiring a barrister or pupil whose conduct has been established to the satisfaction of the Bar Council to amount to a breach of proper professional standards to pay the Bar Council's costs of investigating the conduct which resulted in the order;
- (g) regulating the serving of pupillage and the manner in which any person shall qualify for admission under section 27, including, without limiting the foregoing, the period of pupillage and the examinations to be passed;
- (h) respecting the admission of persons on the basis of qualifications acquired outside Hong Kong including, without limiting the foregoing, the qualifications for admission, the examinations to be passed and the fees to be paid;
- (i) respecting the exemption by it of any person from compliance with the provisions of any rules made under this section and the conditions upon which such exemption may be granted in any particular case; and
- (j) prescribing anything which, under this Ordinance, is to be or may be prescribed by the Bar Council.

**72AB. Conflict between rules made by Chief Justice and Bar Council**

Where power is given to -

- (a) the Chief Justice; and
- (b) the Bar Council,

to make rules in respect of the same matter, rules made by either or both of them in respect of such a matter shall be valid unless there is a conflict between such rules, in which case the rules made by the Chief Justice shall be given precedence to the extent of such conflict.

**72B. (Repealed)**

**73. Power of the Council to make rules**

- (1) The Council may make rules-
  - (a) providing for-
    - (i) the professional practice, conduct and discipline of solicitors, foreign lawyers, employees of solicitors and foreign lawyers and trainee solicitors;
    - (ii) the restriction of payment of commission to unqualified persons; and
    - (iii) for the purpose of harmonizing the relationship of solicitors inter se and, with the prior approval of the Bar Council, governing the relationship of solicitors and barristers;
  - (aa) regulating the issue to solicitors of practising certificates and the fees payable for, the conditions of issue of, the manner of applying for, the period and form of, the publication of the issue and the suspension of such practising certificates and generally in relation thereto;
  - (ab) providing for any continuing legal education or training that must be undertaken by solicitors;
  - (b) in relation to the keeping by solicitors of accounts, providing for-
    - (i) the opening and keeping by solicitors of accounts at banks of clients' money;
    - (ii) the keeping by solicitors of accounts containing particulars and information as to moneys received, held or paid both for or on account of their clients;
    - (iii) empowering the Council to take such action as may be necessary to enable them to ascertain whether or not such rules are being complied with;
    - (iv) regulating the manner in which solicitors shall deal with money held by them in a fiduciary capacity and the books of accounts to be kept in respect thereof and for the auditing of such accounts;
    - (v) the qualifications to be held by an accountant by whom an accountant's report may be given;



- (vi) the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or of his firm and of any other relevant documents with a view to the signing of a report to be delivered by the solicitor under section 8;
  - (vii) the form of an accountant's report and the information to be contained therein in accordance with section 8(1);
  - (viii) the evidence, if any, which shall satisfy the Council that the delivery of an accountant's report is unnecessary and the cases in which such evidence is or is not required;
  - (ix) specifying in such circumstances as may be set forth in the rules a different accounting period from that specified in section 8(2); and
  - (x) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of section 8;
- (c) providing for the conduct of an inquiry and investigation by a Solicitors Disciplinary Tribunal;
- (caa) providing for the practice and procedure to be followed in connection with the submission of a matter by the Council to the Tribunal Convenor under section 9A(1A);
- (cab) providing for the practice and procedure to be followed in connection with the disposal of a matter by the Tribunal Convenor under section 9AB;
- (ca) respecting procedures for investigation by an inspector under section 8AA;
- (cb) requiring a solicitor, foreign lawyer, trainee solicitor or employee to whom a letter of disapproval is sent by the Council, to pay the Council's costs of investigating the conduct which resulted in the letter of disapproval;
- (d) regulating the employment of trainee solicitors and examinations, and in particular, without prejudice to the generality of the foregoing, providing for-
- (i) the manner in which any person shall qualify for admission under section 4(1)(a) including, in particular, the period of employment, if any, of a trainee solicitor in any particular case, the examination or examinations to be passed, the courses to be completed and notices and forms to be used in connection therewith; and
  - (ii) (Repealed)
- (da) respecting the admission of persons under section 4(1)(b), including the qualifications for admission, examinations and the fees to be paid for applications and examinations;
- (db) respecting the registration of foreign lawyers, foreign firms and Associations, including applications for registration, qualification for registration, fees for application and registration, period and form of registration, conditions of registration, suspension of registration and cancellation of registration;
- (dc) respecting the practice of Hong Kong firms, foreign firms and Associations;
- (dd) prohibiting the practice of Hong Kong law by foreign lawyers and for that purpose the Council may define, limit or expand the meaning of the practice of Hong Kong law;
- (e) enabling the Council to exempt any person from compliance with the provisions of any such rules and to impose and enforce conditions upon which such exemption may be granted in any particular case; and

- (f) prescribing any thing which, under this Ordinance, is to be or may be prescribed by the Council.
- (2) Every rule made by the Council under this section shall be subject to the prior approval of the Chief Justice.
- (2A) For the avoidance of doubt, it is declared that in subsection (1)(a)(i), "professional practice" (專業執業), in relation to a solicitor, means acting as a solicitor or the business of acting as a solicitor, whether as a partner, sole practitioner, assistant solicitor or consultant in a Hong Kong firm or as an employee of a non-solicitor employer.
- (3) No rule made under subsection (1)(b), (c) or (d) shall apply to a person to whom section 75(1) applies insofar as such person is acting in the course of the employment which gives rise to the application of that section.

### **73A. Indemnity rules**

- (1) The Council may make rules (in this Ordinance referred to as "indemnity rules") concerning indemnity against loss arising from claims in respect of any description of civil liability incurred-
  - (a) by a solicitor or former solicitor in connection with his practice or with any trust or of which he is or formerly was a trustee;
  - (b) by an employee of a solicitor or former solicitor in connection with that solicitor's practice or with any trust of which that solicitor or the employee is or formerly was a trustee.
- (2) For the purpose of providing such indemnity, indemnity rules-
  - (a) may authorize or require the Society, by itself or jointly with the Society of Notaries, to establish and maintain a fund or funds;
  - (b) may authorize or require the Society, by itself or jointly with the Society of Notaries, to take out and maintain insurance with authorized insurers;
  - (c) may require solicitors or any specified class of solicitors to take out and maintain insurance with authorized insurers.
- (3) Without prejudice to the generality of subsections (1) and (2), indemnity rules-
  - (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
  - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (2)(a) and require solicitors or any class of solicitors to make payments to any such fund;
  - (c) may require solicitors or any class of solicitors to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (2)(b);
  - (d) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (2)(c);
  - (e) may authorize the Society to determine the amount of any payments required by the rules, subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
  - (f) may specify circumstances in which, where a solicitor (not being a solicitor who is exempt from complying with the rules) for whom indemnity is provided has

failed to comply with the rules, the Society or insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply;

- (g) may specify circumstances in which solicitors are exempt from the rules;
  - (h) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and
  - (i) may contain incidental, procedural or supplementary provisions.
- (4) If any solicitor (not being a solicitor who is exempt from complying with indemnity rules) fails to comply with the rules any person may make a complaint in respect of that failure to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.
  - (5) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of indemnity under this section.
  - (6) Every rule made by the Council under this section shall be subject to the prior approval of the Chief Justice.
  - (7) No rule made under this section shall apply to a person to whom section 75 applies in so far as such person is acting in the course of the employment which gives rise to the application of that section.
  - (8) For the avoidance of doubt, it is declared that in subsection (1)(a) and (b), “practice” (執業業務), in relation to a solicitor, means acting as a solicitor or the business of acting as a solicitor, whether as a partner, sole practitioner, assistant solicitor or consultant in a Hong Kong firm or as an employee of a non-solicitor employer.

### **73B. Fees for continuing legal education courses**

The Council may by resolution determine the fees that must be paid for continuing legal education courses.

### **73C. Council may delegate**

The Council may delegate to any person or to a committee of the Council any of the powers or duties granted or imposed on the Council or the Society under this Ordinance, other than the power to make rules under sections 73 and 73A.

### **73D. Power of Council of Society of Notaries to make rules**

- (1) The Council of the Society of Notaries may make rules -
  - (a) providing for -
    - (i) the requirements to be complied with by persons applying for appointment as a notary public under section 40A;
    - (ii) the professional practice, conduct and discipline of notaries public and their employees;
    - (iii) the restriction of payment of commission to unqualified persons; and
    - (iv) for the purpose of harmonizing the relationship of notaries inter se and, with the prior approval of the Bar Council and the Council of the Law Society, as the case may be, governing the relationship of notaries public and solicitors and barristers respectively;

- (b) regulating the issue to notaries public of practising certificates and the fees payable for, the conditions of issue of, the manner of applying for, the period and form of, the publication of the issue and the suspension of such practising certificates and generally in relation to practising certificates;
  - (c) providing for the conduct of any inquiry by a Notaries Public Disciplinary Tribunal;
  - (d) respecting the examinations to be passed by persons applying for appointment as notaries public under section 40A and the fees payable to the Council of the Society of Notaries in connection with such examinations;
  - (e) enabling the Council of the Society of Notaries to exempt any person from compliance with the provisions of any such rules and to impose and enforce conditions upon which such exemption may be granted in any particular case;
  - (f) prescribing any thing which, under this Ordinance, is to be or may be prescribed by the Council of the Society of Notaries.
- (2) Without limiting the effect of subsection (1)(a)(ii), rules made under that paragraph may provide -
- (a) for the circumstances in which employees of notaries public shall be liable to be disciplined;
  - (b) for the bringing of disciplinary proceedings against employees of notaries public; and
  - (c) for the sanctions that may be imposed in respect of breaches of discipline by employees of notaries public,
- and such rules may provide that any provision of Part IV dealing with the discipline of notaries public (including the appointment of members of the Notaries Public Disciplinary Tribunal Panel to constitute a Notaries Public Disciplinary Tribunal to inquire into the conduct of a notary public) shall apply in relation to employees of notaries public.
- (3) Every rule made by the Council of the Society of Notaries under this section shall be subject to the prior approval of the Chief Justice.

### **73E. Indemnity rules for notaries public**

- (1) The Council of the Society of Notaries may make rules concerning indemnity against loss arising from claims in respect of any description of civil liability incurred -
- (a) by a notary public or former notary public in connection with his practice; or
  - (b) by an employee or a former employee of a notary public or former notary public in connection with that notary public's practice.
- (2) For the purpose of providing such indemnity, rules made under this section -
- (a) may authorize or require the Society of Notaries, by itself or jointly with the Law Society, to establish and maintain a fund or funds;
  - (b) may authorize or require the Society of Notaries, by itself or jointly with the Law Society, to take out and maintain insurance with authorized insurers;
  - (c) may require notaries public or any specified class of notaries public to take out and maintain insurance with authorized insurers.

- (3) Without prejudice to the generality of subsections (1) and (2), rules made under this section -
- (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
  - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (2)(a) and require notaries public or any class of notaries public to make payments to any such fund;
  - (c) may require notaries public or any class of notaries public to make payments by way of premium on any insurance policy maintained by the Society of Notaries by virtue of subsection (2)(b);
  - (d) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (2)(c);
  - (e) may authorize the Society of Notaries to determine the amount of any payments required by the rules, subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
  - (f) may specify circumstances in which, where a notary public (not being a notary public who is exempt from complying with the rules) for whom indemnity is provided has failed to comply with the rules, the Society of Notaries or insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply;
  - (g) may specify circumstances in which notaries public are exempt from the rules made under this section;
  - (h) may empower the Council of the Society of Notaries to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and
  - (i) may contain incidental, procedural or supplementary provisions.
- (4) The Society of Notaries shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of indemnity under this section.
- (5) Every rule made by the Council of the Society of Notaries under this section shall be subject to the prior approval of the Chief Justice.

#### **73F. Council of Society of Notaries may delegate**

The Council of the Society of Notaries may delegate to any person or to a committee of the Council of the Society of Notaries any of the powers or duties granted or imposed on the Society of Notaries or its Council under this Ordinance, other than the power to make rules under sections 73D and 73E.

#### **74. Costs Committee**

- (1) There is hereby established a Costs Committee consisting of the following persons-
- (a) a judge of the Court of First Instance appointed by the Chief Justice as Chairman;
  - (b) the Registrar of the High Court or a senior deputy registrar or deputy registrar of the High Court;
  - (c) for the purposes of the Solicitors (General) Costs Rules (Cap. 159 sub. leg.), the Director of Buildings and Lands, or his representative approved by the Chief Justice;

- (ca) for the purposes of the Solicitors (Trade Marks and Patents) Costs Rules (Cap. 159 sub. leg.), the Director of Intellectual Property, or his representative approved by the Chief Justice;
  - (d) the President and one of the Vice-Presidents of the Society and 2 members of the Society nominated by the Society and approved by the Chief Justice.
  - (e) 3 persons appointed by the Chief Executive who, in the opinion of the Chief Executive, can represent the interests of consumers of legal services.
- (1A) None of the persons appointed under subsection (1)(e) may be a legal practitioner or a public officer.
- (2) The quorum for a meeting of the Costs Committee is the Chairman and 5 members.
- (3) The Costs Committee may make rules-
- (a) providing for the remuneration of solicitors in respect of non-contentious business;
  - (b) prescribing that, as regards the mode of remuneration, it shall be according to the scale of rates or percentage varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another;
  - (c) regulating the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say-
    - (i) the position of the party for whom the solicitor is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
    - (ii) the place where, and the circumstances in which, the business or any part thereof is transacted;
    - (iii) the amount of the capital money or rent to which the business relates;
    - (iv) the skill, labour and responsibility involved therein on the part of the solicitor;
    - (v) the number and importance of the documents prepared or perused, without regard to length;
  - (d) authorizing and regulating the taking by a solicitor from his client of security for payment or otherwise, which may become due to him under any such rule; and
  - (e) authorizing and regulating the allowance of interest on costs and expenses.
- (4) Every rule made under this section shall be subject to the prior approval of the Chief Justice.
- (5) So long as any rules made under this section are in operation, taxation of bills of costs of solicitors in respect of non-contentious business shall, subject to the provisions of section 5, be regulated by such rules.

## **PART VIII**

### **GENERAL**

#### **74A. Standing Committee on Legal Education and Training**

- (1) There is established by this section a Standing Committee on Legal Education and Training.
- (2) The functions of the committee are-
  - (a) to keep under review, evaluate and assess-
    - (i) the system and provision of legal education and training in Hong Kong;
    - (ii) without prejudice to the generality of subparagraph (i), the academic requirements and standards for admission to the Postgraduate Certificate in Laws programme;
  - (b) to monitor the provision of vocational training of prospective legal practitioners in Hong Kong by organizations other than the Society or the Hong Kong Bar Association;
  - (c) to make recommendations on matters referred to in paragraphs (a) and (b); and
  - (d) to collect and disseminate information concerning the system of legal education and training in Hong Kong.
- (3) The committee shall consist of-
  - (a) 15 members appointed by the Chief Executive of whom-
    - (i) 2 shall be persons nominated by the Chief Justice;
    - (ii) 1 shall be a person nominated by the Secretary for Justice;
    - (iii) 1 shall be a person nominated by the Secretary for Education and Manpower;
    - (iv) 2 shall be persons nominated by the Society;
    - (v) 2 shall be persons nominated by the Hong Kong Bar Association;
    - (vi) 2 shall be persons nominated by the Vice-Chancellor of the University of Hong Kong;
    - (vii) 2 shall be persons nominated by the President of the City University of Hong Kong;
    - (viii) 2 shall be members of the public; and
    - (ix) 1 shall be a person nominated by The Federation for Continuing Education in Tertiary Institutions, a non-profit-making educational organization, from among its members which provide continuing legal education courses in Hong Kong; and
  - (b) a chairman appointed by the Chief Executive after consultation with the persons and organizations making nominations pursuant to paragraph (a)(i) to (vii) and (ix).
- (4) A member of the committee who is unable to attend a meeting of the committee, except for a member appointed pursuant to subsection (3)(a)(viii), may, subject to the consent of

the chairman, send a substitute to attend the meeting in his place and the substitute shall be deemed to be a member of the committee for the purpose of that meeting.

- (5) A member of the committee including the chairman shall hold office for a term not exceeding 2 years.
- (6) A member of the committee including the chairman may at any time resign from the committee by giving notice in writing of his resignation to the Chief Executive.
- (7) The Secretary for Justice may publish notice of the appointment or termination of membership of a member (including the chairman) appointed pursuant to this section in the Gazette.
- (8) The committee shall report annually to the Chief Executive and its annual report shall be tabled in the Legislative Council.
- (9) The committee may determine its own procedure.

#### **74C. Students already enrolled in legal studies in the United Kingdom**

Notwithstanding the repeal and replacement of section 27 by section 7 of the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000) ("the amending Ordinance"), where a person, on the day the amending Ordinance is published in the Gazette, is enrolled or registered in, or has been offered a place —

- (a) in a course of studies in the United Kingdom that, on completion, will qualify him for a vocational course leading to admission as a barrister in the United Kingdom;
- (b) in the Bar Vocational Course in the United Kingdom; or
- (c) in an external course of studies in Hong Kong offered by an institution in the United Kingdom that, on completion, will qualify him for a vocational course leading to admission as a barrister in the United Kingdom,

the person may, instead of complying with the requirements established under section 27 for admission as a barrister, elect to be admitted under section 27 as that section existed before its repeal by the amending Ordinance, provided he —

- (i) has been called to the Bar in England or Northern Ireland or admitted as an advocate in Scotland;
- (ii) qualifies for admission under the other criteria established under the repealed section 27(1)(b), (c) and (e) and (1A); and
- (iii) applies for admission not later than 31 December 2004.

#### **74D. Lawyers employed in Department of Justice**

- (1) Notwithstanding the repeal of section 27A by section 8 of the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000) ("the amending Ordinance"), where a person, on or before the date appointed by the Secretary for Justice by notice in the Gazette for the coming into operation of section 8(2) of the amending Ordinance, meets the requirements in section 27A (1)(a) to (d), as that section existed before its repeal, the Court may at any time admit such person as a barrister of the High Court of Hong Kong in accordance with the said section 27A(1).
- (2) The Court shall not admit as a barrister, under subsection (1), more than 4 persons in any period of 12 months.
- (3) For the avoidance of doubt, section 27A (1)(e) and (3) does not apply to admission as a barrister under this section.



**75. Saving**

- (1) Nothing in this Ordinance shall-
- (a) prejudice or affect any rights or privileges of any legal officer within the meaning of section 2 of the Legal Officers Ordinance (Cap. 87), any person holding an appointment under section 3(1) of the Legal Aid Ordinance (Cap. 91) or any person deemed to be a legal officer for the purpose of the Legal Officers Ordinance (Cap. 87) by virtue of section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) or section 75(3) of the Bankruptcy Ordinance (Cap. 6) or require any such person or any clerk, trainee solicitor or officer appointed to act for him to be admitted in any case where it would not have been necessary for him to be admitted if this Ordinance had not been enacted; or
  - (b) affect any enactment empowering any person, whether or not a solicitor or a barrister, to conduct, convene or otherwise act in relation to any legal proceedings.
- (2) (Omitted as spent)

**NOTES:**

\* section 31A Appointment of Senior Counsel

Note 1-S of Schedule 2 to 94 of 1997 reads as follows -

"2. Status of existing Queen's Counsel

- (1) This section applies to -
- (a) a barrister of the Supreme Court of Hong Kong who, immediately before the commencement of this section, is holding an appointment as a Queen's Counsel in Hong Kong; and
  - (b) a barrister called to the bar in England or Northern Ireland, or an advocate admitted in Scotland, who, immediately before that commencement -
    - (i) is holding an appointment as a Queen's Counsel in the United Kingdom; and
    - (ii) is admitted as a barrister of the Supreme Court of Hong Kong otherwise than for the purpose of appearing in a specific legal proceeding.
- (2) A barrister to whom this section applies is, on the commencement of this section, taken to have been appointed as a Senior Counsel under section 31A of the Legal Practitioners Ordinance (Cap. 159) with the same precedence as the barrister would have if -
- (a) the barrister had been appointed under that section as a Senior Counsel on the date when the barrister was appointed as a Queen's Counsel; and
  - (b) that section had been in force on that date.
- (3) Nothing in this section or section 31A of the Legal Practitioners Ordinance (Cap. 159) -
- (a) affects the appointment, before the commencement of this section, of a barrister as a Queen's Counsel in Hong Kong; or
  - (b) precludes a barrister from being appointed as a Queen's Counsel in Hong Kong after that commencement but before 1 July 1997."

\* section 34 Barristers Disciplinary Tribunal Panel

Note 2-S. 3 of Schedule 2 to 94 of 1997 reads as follows -

"3. Barristers Disciplinary Tribunal Panel

The substitution of section 34(1) of the Legal Practitioners Ordinance (Cap. 159) by section 8 of this Ordinance does not affect the appointment of any person who was, immediately before the commencement of the last-mentioned section, holding office as a member of the Barristers Disciplinary Tribunal Panel."

Section 6 of Legal Practitioners (Amendment) Ordinance 1998 (No. 27 of 1998) reads as follows:

- "6. (1) Nothing in this Ordinance affects the rights of any person who immediately before the commencement of sections 3 and 4 of this Ordinance was a notary public by virtue of registration on the register of notaries public under Part IV of the Ordinance as then in force to practise as a notary public on and after that commencement and, subject to any order or entry on the register as is referred to in subsection (2), such person may continue to practise as a notary public in the same manner as if he had been appointed as a notary public, and was registered on the register of notaries public, under Part IV of the Ordinance as in force on and after that commencement.
- (2) Nothing in this Ordinance affects the force and effect of any order of the Chief Justice or the Court, or any entry on the register of notaries public, made under Part IV of the Ordinance as in force immediately before the commencement of sections 3 and 4 of this Ordinance, and such orders and entries shall continue to be given effect on and after that commencement in the same manner as if made by the appropriate authority or on the register of notaries public, as the case may be, under Part IV of the Ordinance on or after that commencement."

**SCHEDULE 1**

[ss.3 & 27A]

(Repealed)

**SCHEDULE 2**

[ss. 26A, 26B, 26C & 26D]

**MONEY**

1. (1) The Court of First Instance, on the application of the Council, may order that no payment shall be made without the leave of the court by any person (whether or not named in the order) of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the solicitor or his firm or the foreign lawyer or his firm.
- (2) No order under this section shall take effect in relation to any person to whom it applies unless the Council has served a copy of the order on him (whether or not he is named in it) and, in the case of a bank or other financial institution, has indicated at which of its branches the Council believes that the money to which the order relates is held.
- (3) A person shall not be treated as having disobeyed an order under this section by making a payment of money if he satisfies the Court that he exercised due diligence to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it.
- (4) This section does not apply where the powers conferred by this Schedule are exercisable by virtue of section 26C of this Ordinance.
2. (1) Without prejudice to section 1 if the Council passes a resolution to the effect that any sums of money to which this section applies, and the right to recover or receive them, shall vest in the Council, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Council on trust to exercise in relation to them the powers conferred by this Schedule and subject thereto upon trust for the persons beneficially entitled to them.
- (2) This section applies -
  - (a) where the powers conferred by this section are exercisable by virtue of section 26A of this Ordinance, to all sums of money held by or on behalf of the solicitor or his firm or the foreign lawyer or his firm in connection with his practice or with any trust of which he is or formerly was a trustee;
  - (b) where they are exercisable by virtue of section 26B of this Ordinance, to all sums of money in any client account; and
  - (c) where they are exercisable by virtue of section 26C of this Ordinance, to all sums of money held by or on behalf of the solicitor or his firm or the foreign lawyer or his firm in connection with the trust or other matter to which the complaint relates.
- (3) Except where section 4 applies, the Council shall serve on the solicitor or his firm or the foreign lawyer or his firm and on any other person having possession of sums of money to which this section applies a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money.
- (4) Within 8 days of the service of a notice under subsection (3), the person on whom it was served, on giving not less than 48 hours' notice in writing to the Council and (if the notice under subsection (3) gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the Court of First Instance for an order directing the Council to withdraw the notice.

- (5) If the Court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit.
- (6) If any person on whom a notice has been served under subsection (3) pays out sums of money at a time when such payment is prohibited by the notice -
  - (a) he shall be guilty of an offence and liable on summary conviction to a fine of \$50,000; and
  - (b) the Court of First Instance may, on the application of the Council, order that person to comply with the requirements of the notice within such time as may be specified in the order.
- 3. Without prejudice to sections 1 and 2, if the Court of First Instance is satisfied, on an application by the Council, that there is reason to suspect that any person holds money on behalf of the solicitor or his firm or the foreign lawyer or his firm, the Court may require that person to give the Council information as to any such money and the accounts in which it is held.
- 4. On the death of a solicitor or foreign lawyer who immediately before his death was practising as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name, the right to operate on or otherwise deal with any banking account in the name of the solicitor or his firm or the foreign lawyer or his firm, being an account in the title of which the word "client" appears, shall, notwithstanding anything in this Ordinance or otherwise to the contrary, vest in the Council to the exclusion of any personal representatives of such solicitor or foreign lawyer and shall be exercisable as from the death of the solicitor or foreign lawyer.
- 5. Subject to the service of any notice under section 2(3), and to any application that may be made under section 2(4), the Council or any person in that behalf appointed by the Council may withdraw the moneys, or from time to time any part of the moneys, in any banking account in the name of the solicitor or his firm or the foreign lawyer or his firm, and any moneys in the office of the solicitor or his firm or the foreign lawyer or his firm due to or held on behalf of his clients, and pay them into a special account or special accounts in the name of the Council or such person appointed as aforesaid and may operate on, and otherwise deal with, such special account or accounts as the solicitor or his firm or the foreign lawyer or his firm might have operated on, or otherwise dealt with, that banking account:

Provided that a banker with whom such special account or accounts is or are kept shall be under no obligation to ascertain whether that account or those accounts is or are being so operated on or otherwise dealt with.
- 6. In any case where the Council is unable to ascertain the person to whom any moneys referred to in a notice served under section 2(3) belong or where the Council otherwise thinks it expedient so to do, the Council may apply to the Court of First Instance for directions as to the transfer of such moneys.

## DOCUMENTS

- 7. (1) The Council may give notice to the solicitor or his firm or the foreign lawyer or his firm requiring the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council -
  - (a) where the powers conferred by this Schedule are exercisable by virtue of section 26A of this Ordinance, of all documents in the possession of the solicitor or his firm or the foreign lawyer or his firm in connection with his practice or with any controlled trust; and
  - (b) where they are exercisable by virtue of section 26C of this Ordinance, of all documents in the possession of the solicitor or his firm or the foreign lawyer or his firm in connection with the trust or other matters to which the complaint relates (whether or not they relate also to other matters).

- (2) The person appointed by the Council may take possession of any such documents on behalf of the Council.
- (3) Except in a case where an application has been made to the Court of First Instance under subsection (4), if any person having possession of any such documents refuses, neglects or otherwise fails to comply with a requirement under subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine of \$50,000.
- (4) The Court of First Instance, on an application of the Council, may order a person required to produce or deliver documents under subsection (1) to produce or deliver them to any person appointed by the Council at such time and place as may be specified in the order, and authorize him to take possession of them on behalf of the Council.
- (5) If on an application by the Council the Court of First Instance is satisfied that there is reason to suspect that documents in relation to which the powers conferred by subsection (1) are exercisable have come into the possession of some person other than the solicitor or his firm or the foreign lawyer or his firm, the Court may order that person to produce or deliver the documents to any person appointed by the Council at such time and place as may be specified in the order and authorise him to take possession of them on behalf of the Council.
- (6) On making an order under this section, or at any later time, the Court, on the application of the Council, may authorise a person appointed by the Council to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which the order relates.
- (7) Upon taking possession of any such documents, the Council shall serve upon the solicitor or foreign lawyer and every person from whom those documents were received, or from whose premises they were taken by virtue of an order made under this section, a notice giving particulars and the date of taking possession thereof.
- (8) Subject to subsection (9), a person upon whom a notice under subsection (7) is served, on giving not less than 48 hours' notice to the Council and (if the notice under subsection (7) gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the Court of First Instance for an order directing the Council to deliver the documents to such person as the applicant may require.
- (9) A notice under subsection (8) shall be given within 8 days of the service of the Council's notice under subsection (7).
- (10) If no application is made under subsection (8), or if the judge to whom any such application is made directs that the documents shall remain in the custody or control of the Council, the Council may make inquiries to ascertain the person to whom those documents belong and may deal with those documents in accordance with the directions of that person:

Provided that, before dealing with such documents, the Council may take copies of, or extracts from, any such documents.
- (11) Without prejudice to the provisions of Part IIA of this Ordinance and this Schedule, the Council may apply to the Court of First Instance for an order as to the disposal or destruction of any documents in its possession by virtue of this section or section 8.
- (12) On an application under subsection (8) or (11), the Court may make such order as it thinks fit.
- (13) Except so far as its right to do so may be restricted by an order on an application under subsection (8) or (11), the Council may take copies of or extracts from any documents in its possession by virtue of this section or section (8) and require any person to whom it is proposed that such documents shall be delivered, as a condition precedent to delivery, to give a reasonable undertaking to supply copies or extracts to the Council.

## **MAIL**

8. (1) The Court of First Instance, on the application of the Council, may from time to time order that for such time not exceeding 18 months as the Court thinks fit postal packets (as defined in section 2 of the Post Office Ordinance (Cap. 98)) addressed to the solicitor or his firm or the foreign lawyer or his firm at any place or places mentioned in the order shall be directed to the Council or any person appointed by the Council at any other address therein mentioned; and the Council, or that person on its behalf, may take possession of any such packets received at that address.
- (2) Where such an order is made the Council shall pay to the Postmaster General the like charges (if any), as would have been payable for the redirection of the packets by virtue of any scheme made under regulation 32 of the Post Office Regulations (Cap. 98 sub. leg.), if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Postmaster General to redirect them to him at the address mentioned in the order.
- (3) This section does not apply where the powers conferred by this Schedule are exercisable by virtue of section 26C of this Ordinance.

## **GENERAL**

9. The powers in relation to sums of money and documents conferred by this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.
10. Subject to any order for the payment of costs that may be made on an application to the Court under this Schedule, any costs incurred by the Council for the purposes of this Schedule, including, without prejudice to the generality of this section, the costs of any person exercising powers under this Schedule on behalf of the Council, shall be paid by the solicitor or foreign lawyer or his personal representatives and shall be recoverable from him or them as a debt owing to the Council.
11. Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
12. Any application to the Court of First Instance under this Schedule may be disposed of in chambers.
13. The Council may do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers under this Schedule.
14. Any requirement of notice under this Schedule shall be made in writing under the hand of such person as may be appointed by the Council for the purpose and may be served on any person either by personal service or by being sent by registered post addressed to his last known place of business or residence.