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## 24. PRACTICE DIRECTIONS

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### PREFACE

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

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

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

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

Practice Directions which dealt with publicity have been repealed and a new Solicitors' Practice Promotion Code is published separately.

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

January 1990

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

This revised print is current as at 24 October 2005.

**A. CONVEYANCING**

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 [Repealed]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 [Repealed]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

**B. COSTS**

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

**C. CRIMINAL CASES**

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

**D. PRACTICE SUPERVISION**

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

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

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4. Form "C" Trainee Solicitor Contract
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## A. CONVEYANCING

### 1. [Repealed on 1 January 2002]

### 2. SALE OF FLATS IN UNCOMPLETED DEVELOPMENTS BY WAY OF GRANT OR SALE OF SUB-LEASES

- (1) This Practice Direction is to be read as supplemental to Circular No. 8/80 dated 15th January, 1980. (see below)
- (2) Where a developer (or a sub-seller) is selling any interest in a property under construction which is for less than the whole of the residue of the term of years under which the property is held under the relevant Government grant, the Law Society's Non-Consent Scheme does not apply.
- (3) It follows from paragraph (2) that in such circumstances the vendor and purchaser must be separately represented. The mandatory clauses (see rule 5C of the Solicitors' Practice Rules) may not be amended to achieve the sale of a sub-lease.
- (4) As long as the documentation is properly prepared such transactions are not open to any legal objection. However, because such transactions are unusual and purchasers may misunderstand the true nature thereof, the parties must be separately represented.
- (5) In any transaction to which this Practice Direction applies, the solicitors representing the vendor may not seek payment of their fees from the purchaser or vice-versa.

## CIRCULAR 8/80

### Sale & Purchase of Flats

Since the issue of Circular to Members No. 37/78 dated 10th April, 1978, the General Committee has received further representations from members. In view of this, a new Ad Hoc Committee was appointed with the following terms of reference:-

"To make recommendations as to affording better protection to purchasers of flats in uncompleted developments and to consider and make recommendations for improvements in the present conveyancing systems and practices relating thereto."

The Ad Hoc Committee has now recommended that as an alternative to separate legal representation, for the sale and purchase of flats or units in an uncompleted development where the Consent Scheme does not apply, a standard form of Agreement for Sale & Purchase (containing mandatory clauses) and Declaration which closely follow those for the Consent Scheme should be used by all members in order to provide additional protection for purchasers.

The General Committee has endorsed and accepted the Ad Hoc Committee's recommendations and they will be made the subject of a Practice Rule to implement the same which rule is due to be gazetted shortly. Copies of the standard form of Agreement for Sale & Purchase (which shows the mandatory clauses underlined) and Declaration are supplied to each firm under cover of this Circular. Members will be advised of the date of the coming into operation of the Practice Rule in due course.

As mentioned in paragraph 8 of Land Office Circular Memorandum No.57, if it is found that adequate protection is not afforded to purchasers of flats or units under the Non-Consent Scheme, the Government will step in and introduce further legislative protection. It is appreciated that certain developments will have been partially sold at the date when the Practice Rule becomes operative. The Committee would be prepared to entertain applications for waiver under rule 6 of the Solicitors' Practice Rules in such cases.

### **3. SOLICITORS' ACCOUNTS RULES**

- (1) Solicitors who act as stakeholders in respect of funds received from purchasers where the Sale and Purchase Agreement is subject to either:-
  - (a) the prior consent of the Director of Lands (previously the Registrar General (Land Officer)) pursuant to the special conditions under which the land is held; or
  - (b) where the Sale and Purchase Agreement is entered into in accordance with the requirements of the Non-Consent Scheme,may deposit such funds either in a bank in accordance with rule 3 of the Solicitors' Accounts Rules, or alternatively, provided the following conditions are fulfilled, with a licensed (but not a registered) Deposit Taking Company.
- (2) The conditions are that the Sale and Purchase Agreement:-
  - (a) contains an express instruction to the solicitor to hold the funds with a licensed Deposit Taking Company; and
  - (b) identifies by name the licensed Deposit Taking Company with whom the funds are to be held.
- (3) Except as stated above, clients' funds must be deposited with a licensed bank.

### **4. RULE 5C OF THE SOLICITORS' PRACTICE RULES - SALE OF FLATS IN UNCOMPLETED DEVELOPMENTS**

- (1) This Practice Direction is to be read in conjunction with rule 5C of the Solicitors' Practice Rules. It applies to the situation that arises where the vendor offers for sale property in an uncompleted development in circumstances where rule 5C applies and the vendor and the purchaser are separately represented.
- (2) A solicitor may not directly or indirectly permit the vendor or any servant or agent of the vendor, to solicit business on his behalf. A solicitor must be satisfied before accepting instructions from a purchaser that the purchaser has not been improperly induced to give instructions to his firm.
- (3) Where a solicitor accepts instructions from such a purchaser in respect of a flat in an uncompleted development, he must make a detailed comparison between the proposed form of Sale and Purchase Agreement drafted by the vendor and the clauses required by the Council for mandatory inclusion in such an agreement where the solicitor acts for both the vendor and the purchaser.

- (4) The solicitor acting for the purchaser must give the purchaser written advice stating, if such be the case, that the proposed agreement does not contain all the mandatory clauses required by the Law Society in Sale and Purchase Agreements of uncompleted developments and giving details with full particulars of the omissions / variations (if any). The written advice must make it clear to the purchaser the extent to which he may be prejudiced by the omissions / variations in whole or in part of such mandatory clauses.
- (5) Save in exceptional circumstances a period of not less than 48 hours must elapse between the delivery to the purchaser of written advice complying with paragraph (4) above and the execution by the purchaser of the Sale and Purchase Agreement.
- (6) Solicitors are reminded of their duty to approach the vendor's solicitors with appropriate amendments to the Sale and Purchase Agreement with a view to including the contents of the mandatory clauses before allowing their purchaser client to sign it.
- (7) This Practice Direction came into effect on 1st March 1983.

## 5. MANAGEMENT OF BUILDINGS - DEEDS OF MUTUAL COVENANT

Reference is made to the Society's Circular No.04-123 on Guidelines for the drafting of Deeds of Mutual Covenant.

With immediate effect, the Guidelines shall apply to all developments where approval of the Deeds of Mutual Covenant is not required to be given by the Director of Lands.

Subsequent amendments to the Guidelines shall be notified in Circulars and shall apply with effect from the date as stated in the relevant circulars.

Members who wish to deviate from the Guidelines must apply for a waiver setting out the grounds of the application.

## 6. [Repealed on 13 April 2004]

## 7. SALE AND PURCHASE OF PARTITIONED RESIDENTIAL FLATS

- (1) A solicitor may not act for both the vendor and the purchaser in the sale and purchase of partitioned residential flats unless the following requirements are complied with :-
  - (a)
    - (i) plans for alteration of such flats have been duly approved by the Building Authority; or
    - (ii) an authorised person has certified that no alteration plans are required to be approved by the Building Authority;
  - (b) where plans for alteration works have been approved by the Building Authority, an authorised person has certified that such alteration works have been carried out in accordance with the approved plans;
  - (c) there is no breach of the provisions of the relevant Crown Grant;
  - (d) there is no breach of the provisions of the relevant Deed of Mutual Covenant.

- (2) A solicitor for the purchaser is under an obligation to draw his client's attention to the above requirements. Where the purchaser persists in proceeding with the transaction despite the non-compliance with such requirements or any of them, his solicitor should obtain from him an acknowledgment in writing to the effect that the purchaser has been advised of the requirements and that notwithstanding such advice, the purchaser has decided to proceed with the transaction.
- (3) This Practice Direction does not apply to the sale and purchase of partitioned non-residential flats or units.

## **8. CERTIFIED COPIES OF TITLE DEEDS**

- (1) It is unethical for a purchaser's solicitor to make certified copies of title deeds or certified copies thereof supplied by the vendor's solicitor unless such copies are made:-
  - (a) with the express consent of the vendor's solicitors; or
  - (b) on the instructions and for the purpose of that purchaser who has already paid the vendor's solicitor for the certified copies supplied.
- (2) This Practice Direction came into effect on 1st May 1989 and was amended on 17 February 2003.

## **9. RULE 5C (1) OF THE SOLICITORS' PRACTICE RULES**

- (1) In a conveyancing transaction to which rule 5C (1) of the Solicitors' Practice Rules applies a solicitor acting for one party, or any member of his firm, should not attest the signature of another party, who is not represented by that solicitor.
- (2) This Practice Direction came into effect on 17th April 1990.

## **9A. RULE 5C(1) OF THE SOLICITORS' PRACTICE RULES - HOME OWNERSHIP SCHEME ("HOS") AND PRIVATE SECTOR PARTICIPATION SCHEME ("PSP") CONVEYANCING TRANSACTIONS**

- (1) Solicitors appointed by the Housing Authority to deal with HOS conveyancing transactions (i.e. initial sales, buy-backs and re-sales) and PSPS conveyancing transactions (i.e. buy-backs and re-sales) can attest the signature of the other party (i.e. purchasers in HOS initial sales and re-sales and PSPS re-sales and vendors in HOS and PSPS buy-backs) without representing that other party. In such event the solicitor must make it clear to that other party that the solicitor is acting only for the Housing Authority and not for that other party.
- (2) This Practice Direction came into effect on 10th April 1995 and was amended with effect from 1st May 1996.



**9B. RULE 5C(1) OF THE SOLICITORS' PRACTICE RULES - FINANCIAL SECRETARY INCORPORATED ("FSI") LEASE EXTENSION CASES**

- (1) Solicitors appointed by the FSI to deal with FSI lease extension cases may attest the signature of the assignees without representing the assignees. In such event the solicitor must make it clear to the assignee that the solicitor is only acting for the FSI and not for the assignee.
- (2) Notwithstanding the provisions of Practice Direction A5, a general waiver is given for non-compliance with Practice Direction A5 involving FSI assignments. In these cases, as the assignments are in completed developments, in respect of which there is an existing deed of mutual covenant (DMC), the terms of the newly drawn up DMC must follow the existing DMC, the provisions of which might not comply with Practice Direction A5.
- (3) This Practice Direction came into effect on 1st May 1996.

**10. RULE 5C (1) OF THE SOLICITORS' PRACTICE RULES**

- (1) Where, in a conveyancing transaction to which rule 5C (1) applies, A sells to B, B sub-sells to C and there is an agreement in which A is the vendor, B the confirmor and C the purchaser, the solicitor who acts for A may not also act for either B or C.
- (2) This Practice Direction came into effect on 20th August 1990.

**11. RULE 5C (1) OF THE SOLICITORS PRACTICE RULES**

- (1) Notwithstanding Practice Direction 9, in a conveyancing transaction where a sub-purchaser has been appointed as attorney for a confirmor, the solicitor acting for the sub-purchaser may attest the signature of the sub-purchaser in his capacity as attorney for the confirmor as well as in his own capacity as sub-purchaser.
- (2) This Practice Direction came into effect on 15th July 1991.

**12. RULE 5C OF THE SOLICITORS' PRACTICE RULES**

- (1) A solicitor or two or more solicitors practising in partnership or in association shall not act for both the vendor and the purchaser under the provisions of rules 5C(2), (3), (4) or (5) unless the appropriate bilingual "Warning to Purchasers" in the forms below, duly signed by the purchaser, is delivered to the solicitor at the time of giving or confirming instructions to the solicitor.
- (2) This Practice Direction came into effect on 1st May 1996.

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A1  
(for consent scheme)

WARNING TO PURCHASERS -  
PLEASE READ CAREFULLY!

1. This is NOT A BINDING AGREEMENT FOR YOU to buy the property but is binding on the vendor. But, if you withdraw from the purchase, you will forfeit 5% of the purchase price to the vendor and you will be entitled to be repaid only the remaining part of the deposit after deduction of the forfeited amount.
2. Before you sign the formal sale and purchase agreement which you have to sign if you go on with your purchase you should instruct a solicitor to protect your interests and to ensure that your purchase is properly completed.
3. You can instruct your own independent solicitor to act for you to conduct the purchase or you can instruct the vendor's solicitor to act for you as well as for the vendor.
4. YOU ARE RECOMMENDED TO INSTRUCT YOUR OWN SOLICITOR, who will be able at every stage of your purchase to give you independent advice.
5. If you instruct the solicitor for the vendor to act for you as well and if a conflict arises between you and the vendor he will not be able to protect your interests and you will then have to instruct your own solicitor anyway, in which case the total fees you will have to pay may be higher than the fees which you would have had to pay if you had instructed your own solicitor in the first place.
6. Please think carefully before deciding whether to instruct your own independent solicitor, or the vendor's solicitor, to protect your interests. You are free to choose whichever option you prefer.

I/We acknowledge receipt of a copy of this warning and fully understand the contents thereof.

Dated this                      day of                      2000. “

“A2”  
(適用於同意方案)

重要提示  
買方請小心閱讀

1. 此合約對你最後完成此宗交易與否並沒有約束力,但賣方則需要遵守此合約之條文。  
若你取消此合約,賣方有權沒收百份之五之樓價,而你只可取回其餘部分之定金。
2. 如你欲繼續此宗交易,你須要簽署一張正式買賣合約,在此之前,應請教律師保障你的權益,使此交易可妥善完成。
3. 你可聘用自己選擇的獨立律師來完成此宗交易,聘用賣方的律師處理此宗交易。
4. 此提示建議你聘用自己選擇的律師,能在此宗交易每一階段中給你獨立專業意見。
5. 如你聘用賣方的同一律師來代表你以及如買賣雙方發生利益衝突時,賣方律師將會不能保障到你的權益,在此情況下你須另聘律師,而最後你所須付的全部律師費或會比你從開始便僱用獨立律師為高。
6. 請你小心考慮是否聘用自己選擇的獨立律師或僱用賣方的同一律師來保障你的權益。你可自由選擇。

我/我們已收到此提示之副本及完全明白此提示之內容。

公曆二千年      月      日

“

B1  
(for non-consent scheme)

WARNING TO PURCHASERS -  
PLEASE READ CAREFULLY!

1. This is a BINDING AGREEMENT but you will be expected to sign later a formal sale and purchase agreement.
2. Before you do so you should instruct a solicitor to protect your interests and to ensure that your purchase is properly completed.
3. You can instruct your own independent solicitor to act for you to conduct the purchase or you can instruct the vendor's solicitor to act for you as well as for the vendor.
4. YOU ARE RECOMMENDED TO INSTRUCT YOUR OWN SOLICITOR, who will be able at every stage of your purchase to give you independent advice.
5. If you instruct the solicitor for the vendor to act for you as well and if a conflict arises between you and the vendor he will not be able to protect your interests and you will then have to instruct your own solicitor anyway, in which case the total fees you will have to pay may be higher than the fees which you would have had to pay if you had instructed your own solicitor in the first place.
6. Please think carefully before deciding whether to instruct your own independent solicitor, or the vendor's solicitor, to protect your interests. You are free to choose whichever option you prefer.

I/We acknowledge receipt of a copy of this warning and fully understand the contents thereof.

Dated this                      day of                      2000. “

“B2”  
(適用於非同意方案)

重要提示  
買方請小心閱讀

1. 此合約是有約束力的合約,但預期你會簽署一張正式買賣合約。
2. 在簽正式合約前,應請教律師保障你的權益,使此交易可妥善完成。
3. 你可聘用自己選擇的獨立律師來完成此宗交易,或聘用賣方的律師處理此宗交。
4. 此提示建議你聘用自己選擇的律師,他能在此宗交易每一階段中給你獨立專業意見。
5. 如你聘用賣方的同一律師來代表你以及如買賣雙方發生利益衝突時,賣方律師將會不能保障到你的權益,在此情況下你須另聘律師,而最後你所須付的全部律師費或會比你從開始便僱用獨立律師為高。
6. 請你小心考慮是否聘用自己選擇的獨立律師或僱用賣方的同一律師來保障你的權益。你可自由選擇。

我/我們已收到此提示之副本及完全明白此提示之內容。

公曆二千年      月      日

## B. COSTS

### 1. SOLICITORS' BILLS OF COSTS

If requested, an itemized Bill of Costs must be rendered to a client if the amount of costs exceeds \$10,000. If there are Counsel's fees, these must be separately disclosed even if the total agreed sum includes Counsel's fees.

### 2. SOLICITORS (GENERAL) COSTS RULES - EQUITABLE MORTGAGE AND LEGAL CHARGE

- (1) While the Solicitors (General) Costs Rules make no provision for a solicitor to charge a mortgagor at full scale fee for a legal charge which is executed pursuant to an equitable mortgage of the same property for which full scale costs have already been paid, paragraph 5(a) of Part 1 of the First Schedule provides:-

"5. The scale of costs in this Part shall not apply to the following non-contentious business, which shall be chargeable under rule 5:-

- (a) a legal mortgage or debenture incorporating leasehold property or interests therein, executed pursuant to an agreement for a mortgage or debenture already charged for under this Part."

The Council takes the view that an equitable mortgage is similar to an agreement for a mortgage and that Rule 5 rather than the scale of costs should apply to a legal charge executed pursuant to an equitable mortgage.

- (2) The Council has decided, for the sake of uniformity and consistency, that the costs payable for a legal charge or mortgage executed pursuant to an equitable mortgage or agreement for a mortgage should be as follows:-

- (a) where the consideration stated in the legal charge or mortgage exceeds \$100,000.00, one half of the costs set out in Part I of the First Schedule to the Solicitors (General) Costs Rules on the consideration so stated subject to a maximum of \$3,000.00; and
- (b) where the consideration stated in the legal charge or mortgage does not exceed \$100,000.00, a discretionary amount not exceeding \$900.00.

Provided that where the legal charge or mortgage is prepared by a firm of solicitors other than the firm who prepared the equitable mortgage or agreement for a mortgage, the full scale costs set out in Part I of the First Schedule shall apply.

### 3. SOLICITORS (GENERAL) COSTS RULES - ASSIGNMENT BETWEEN SUBSIDIARY / ASSOCIATED COMPANIES

- (1) The approval by a mortgagee's solicitor of an assignment made between two subsidiary or associated companies subject to an existing mortgage should be put on the same footing as any of the non-contentious business set out in paragraph 5 of Part I of the First Schedule to the Solicitors (General) Costs Rules. Accordingly, a mortgagee's solicitor in such circumstances should charge under rule 5 rather than in accordance with the scale of costs.

- (2) This Practice Direction came into effect on 14th December, 1987.

**Explanatory Note**

The Council has considered the question whether a mortgagee's solicitor is entitled to charge a scale fee for approving an assignment made between two subsidiary or associated companies subject to an existing mortgage. The argument against charging a scale fee is that the mortgagee's solicitor need not approve the mortgagor's title to the property because this had already been done before the existing mortgage was executed. The situation is analogous to a legal mortgage executed pursuant to an agreement for mortgage or the approval of a second mortgage by a mortgagee's solicitor : see paragraph 5(a) and (b) of Part I of the First Schedule to the Solicitors (General) Costs Rules.

## C. CRIMINAL CASES

### 1. MEASURES TO COMBAT TOUTING RELATING TO CRIMINAL CASES

[Replaced by rule 5D of the Solicitors' Practice Rules which came into effect on 30 April 1993.]

### 2. SURETY FOR BAIL

[Replaced by Practice Direction I.1 which came into effect on 12 September 1994.]

### 3. STEPS TO BE TAKEN IN CRIMINAL MATTERS

- (1) This Practice Direction is to be read in conjunction with rule 5D(a) of the Solicitors' Practice Rules.
- (2) When attending court, a solicitor shall keep in his possession a copy of the confirmatory letter signed by his client, and shall, upon demand by an inspector appointed by the Council in accordance with section 8AA of the Legal Practitioners Ordinance, produce a copy of the letter for inspection by the inspector.
- (3) This Practice Direction came into effect on 2 January 1996.

### 4. VIDEO EVIDENCE OF CHILDREN

- (1) When a solicitor instructed and acting for the prosecution or defence of an accused has in his possession a copy of a video recording of a child witness which may be admitted in evidence in a criminal trial in accordance with section 79C of the *Criminal Procedure Ordinance* (Cap. 221) he must have regard to the following duties and obligations:
  - (a) Upon receipt of the recording, a written record of the date and time and from whom the recording was received must be made and a receipt must be given.
  - (b) The recording and its contents must be used only for the proper preparation of the prosecution or defence case of an appeal against conviction and/or sentence and/or review, as the case may be, and the solicitor must not make or permit any disclosure of the recording or its contents to any person except when, in his opinion, such disclosure is in the interests of his proper preparation of that case.
  - (c) The solicitor must not make or permit any other person to make a copy of the recording, nor release the recording to the accused, and must ensure that:
    - (i) when not in transit or in use, the recording is always kept in a secure place, and;
    - (ii) when in transit, the recording is kept safe and secure at all times and is not left unattended, especially in vehicles or otherwise.
  - (d) Proper preparation of the case may involve viewing the recording in the presence of the accused. If this is the case, viewing should be done:



- (i) if the accused is in custody, only in the prison or other custodial institution where he is being held, in the presence of the solicitor and/or the barrister;
    - (ii) if the accused is on bail, at the solicitor's office or in counsel's chambers or elsewhere in the presence of the solicitor and/or his barrister.
  - (e) The solicitor must ensure that the barrister returns the recording to him as soon as practicable after the conclusion of the barrister's role in the case. A written record of the date and time of despatch and to whom the recording was delivered must be made.
- (2) This Practice Direction came into effect on 3 March 1997.

## **D. PRACTICE SUPERVISION**

### **1. SOLICITORS' EMPLOYEES QUALIFIED FOR ADMISSION IN HONG KONG**

Any solicitor who employs a person, who is qualified for admission as a solicitor, must ensure that his employee applies to be admitted as a solicitor in Hong Kong within a reasonable time after the person is employed or becomes so qualified.

### **2. SIGNATURE OF POST**

- (1) All letters from a firm of solicitors, including from any individual, in the course of the professional practice of the firm must be signed, whether in the name of the firm or of the individual, by a person who is an approved signatory for the purposes of this Practice Direction.
- (2) The phrase "in the course of the professional practice" does not mean the same as "in the course of the business". For example, letters written on behalf of the firm to its landlords, its bankers, its stationery suppliers or its insurers would not be required to be signed by an approved signatory. On the other hand, the category of letters in the course of the professional practice of the firm will include (but not be limited to) all letters written to clients in their capacity as such, all letters to other lawyers regarding clients' affairs and all letters written on behalf of clients to third parties.
- (3) An approved signatory for these purposes is:-
  - (a) any solicitor who is qualified to act as a solicitor in accordance with section 7 of the Legal Practitioners Ordinance who is a sole practitioner or partner in, or an employee of, or a consultant to, the firm;
  - (b) any lawyer qualified in his own jurisdiction who has satisfied the requirements of section 4 or 5 of the Overseas Lawyers (Qualification for Admission) Rules and has satisfied the requirements as to residence and who is authorised by the firm to sign;
  - (c) any of the following who is an employee of the firm, in relation to matters within such person's competence in each case but not otherwise:
    - (i) a foreign lawyer;
    - (ii) a Chartered Accountant or Certified Public Accountant (practising) whose qualification has satisfied the membership admission requirements of the Hong Kong Society of Accountants;
    - (iii) a member of the United Kingdom Institute of Trademark Agents or the Hong Kong Institute of Trademark Practitioners;
    - (iv) a United Kingdom Chartered Patent Agent who has entered on the United Kingdom register of Patent Agents under the provisions of the Register of Patent Agents Rules 1982 administered under the United Kingdom Patents Act 1977;
    - (v) a fellow of the Institute of Chartered Secretaries and Administrators or the Hong Kong Institute of Company Secretaries;

- (vi) a person of comparable qualification and / or experience approved by the Council on application to it, subject to such conditions as the Council may think fit.
- (4) Where a person is an approved signatory by virtue only of 3(b) or 3(c):
  - (a) that person's authority to sign shall be in writing signed by the sole practitioner or a partner in the firm for the time being;
  - (b) the sole practitioner or, as the case may be, all partners in the firm or a partner designated in writing for the purpose shall be responsible for ensuring that that person:
    - (i) does not exceed his / her authority; and
    - (ii) complies with all relevant professional requirements; and
  - (c) the name of the approved signatory must appear in print below his / her signature, whether the signature is in the name of the individual or the firm.
- (5) "Letters" means all written communications including fax and telex messages but:
  - (a) mere covering or "with compliments" communications need not be signed; and
  - (b) a telex message will be considered signed if an authority to despatch it is signed.
- (6) This Practice Direction is without prejudice to other Practice Directions, in particular Practice Direction D4.
- (7) It should be noted that legislation, practice directions of the court and other regulations may require certain documents (for example, pleadings) issued by a firm to be signed by a solicitor and not by any other approved signatory.

### **3. EMPLOYMENT OF PART-TIME CLERKS**

### **4. MAXIMUM NUMBER OF UNQUALIFIED STAFF**

[Replaced by rule 4B of the Solicitors' Practice Rules which came into effect on 30 April 1993.]

### **5. SHARING AN OFFICE AND STAFF**

- (1) A solicitor's practice should be conducted in self - contained premises. Staff and facilities should be under his exclusive control.
- (2) Save as mentioned below, in the conduct of his practice as a solicitor he must not:
  - (i) share premises, which term shall include waiting rooms and reception areas;
  - (ii) share staff, which term shall include telephonists, receptionists and all other non-fee earning staff employed by him;
  - (iii) share telephone, computer or electronic equipment used for the transmission or storage of clients' confidential information.

- (3) Subject to the need to maintain clients' confidentiality, a solicitor may:
- (i) share premises, staff and facilities with another solicitor with whom he is in partnership;
  - (ii) share services reasonably regarded as those of an independent contractor with any other solicitor or third party;
  - (iii) share premises, personnel and facilities where there is a formal association between two firms of solicitors;
  - (iv) share premises, management, employees and facilities where there is a registered association between a firm of solicitors and one or more foreign firms; and
  - (v) share premises, management, facilities and employees who are unqualified persons in accordance with the provisions of the Solicitors (Group Practice) Rules.
  - (vi) share premises, management, employees and facilities in the Mainland where there is a registered association in the Mainland between a firm of solicitors and a Mainland law firm, in accordance with the Regulations for Association between Hong Kong and Macau Law Firms and Mainland Law Firms (Order No.83 of Ministry of Justice).
- (4) Where a building is shared with other business or where there are shared common areas:
- (i) signs must indicate the premises of the solicitor so as to distinguish them from the premises occupied by others;
  - (ii) common areas must not give the appearance of being part of another business.
- (5) For the purposes of paragraph 3(iii), a "formal association" means an association between Hong Kong firms of solicitors where there is at least one partner common to each of the associated firms. It does not include an association between a Hong Kong firm and a foreign law firm.
- (6) [Repealed]
- (7) The prohibition on sharing of staff is not intended to prohibit short secondments of staff between firms or companies or organisations, for example, for staff development. In these cases, the secondee would be regarded as an employee of the Hong Kong firm.
- (8) This Practice Direction came into effect on 23 March 1992 and was amended on 26 September 1994, 1 February 2003 and 1 January 2004.
- (9) The Council may, in a particular case, waive in writing any provision of this Practice Direction, subject to such conditions as it may impose.

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

- (1) Subject to the provisions of this Practice Direction, a firm is permitted to have a maximum of 10 clerks authorised to visit persons in custody ("authorised clerks").
- (2) A principal of a firm shall ensure that:

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

## 7. CESSATION OF PRACTICE

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

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

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

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

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

## 9. BANKRUPTCY

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

## **E. TRAINEE SOLICITORS AND ADMISSION**

1. [Repealed]

### **2. TRAINEE SOLICITOR CONTRACTS - APPROVED FORMS**

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

These forms must be used in all cases.

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

### **3. TRAINEE SOLICITORS - ABSENCES FROM THE OFFICE**

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

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



## F. COUNSEL

### 1. INSTRUCTIONS TO COUNSEL

- (1)
    - (a) Whenever counsel is briefed in proceedings in Court, the instructing solicitor must deliver to him a formal brief or backsheet with the fee marked. Failure to deliver a brief or backsheet or failure to mark the fee would result in counsel being unable to comply with the Code of Conduct of the Bar of Hong Kong. Further, in a criminal matter, the requirements under rule 5D(e) of the Solicitors' Practice Rules must be complied with.
    - (b) Every backsheet must contain the following information:
      - (i) the name of the solicitor in charge of the matter;
      - (ii) the name of the firm of the instructing solicitors;
      - (iii) the name of the case (and the court number if known at the time);
      - (iv) the name of counsel;
      - (v) the agreed brief fee and any agreed refresher or "Legal Aid" or "No Fee" as appropriate.
  - (2)
    - (a) Where counsel is briefed in a criminal matter, the instructing solicitor must personally sign the backsheet or other written instructions to counsel (rule 5D(e) of the Solicitors' Practice Rules).
    - (b) Where counsel is briefed in any other matter, the instructing solicitor must sign the backsheet or other written instructions to counsel either in his personal signature or in the name of the firm of the instructing solicitors. If a firm name is used, then the initials of the solicitor who has signed on behalf of the firm should appear on the instructions or covering letter for identification purposes.
- (3) Whenever counsel is instructed, counsel should always be approached in the first instance by the instructing solicitor, and not by the solicitor's staff and only such instructing solicitor, and not the solicitor's staff, is entitled to negotiate a fee with counsel or counsel's staff.
- (4) Whenever a solicitor agrees with a client to charge a lump sum for the conduct of a case, and the sum agreed includes counsel's fees, this fee should be clearly indicated in writing to the client at the time the lump sum fee is agreed.

## **G. PROFESSIONAL STATIONERY**

### **1. BUSINESS LETTERS**

- (1) The name of every solicitor admitted in Hong Kong who is a principal in a firm of solicitors and who holds a current practising certificate shall be stated in legible characters on all business letters in connection with a solicitor's practice.
- (2) The names of principals not ordinarily resident in Hong Kong need not be stated, but if they are, they must be described as non-resident.
- (3) The Council may exempt a partnership from the requirement in paragraph 1 where the number of partners' names is so large that it would be unreasonable to require them to be stated. In such cases the Council may require the firm to take other steps to make known the names of the partners.
- (4) This Practice Direction came into effect on 1st May 1990.

#### **Explanatory Note (Circular 138/90)**

The requirement to state a principal's name on business letters in connection with a solicitor's practice applies whether the letter is transmitted by post or electronically.

If a fax transmission is no more than a compliments slip then it would not be treated as a letter, but if it contained substantial matter it would be treated as a letter and the Practice Direction would apply.

### **1A. BUSINESS LETTERS - REFERENCE TO FOREIGN LAWYERS**

- (1) A firm shall ensure that in respect of any individual foreign lawyer employed by the firm whose name appears on business letters issued in connection with the firm's practice, his foreign jurisdiction of admission or the country of that jurisdiction is stated.
- (2) This Practice Direction came into effect on 1 January 1997.

### **2. BUSINESS CARDS**

- (1) A solicitor or foreign lawyer may state on his business card any academic or professional qualification held by him, not being an examination qualification which leads to such qualification.
- (2) This Practice Direction came into effect on 1 May 1995, and was amended on 1 July 1996.

#### **Explanatory Note (Circular 122/95)**

The letters "PCLL" and similar terms designate an examination leading to professional qualification as a solicitor, and as such may not appear on business cards of solicitors.

**Explanatory Note (Circular 169/96)**

Specialist credentials granted by a professional body in another jurisdiction are not a professional qualification, and as such may not appear on business cards of solicitors or foreign lawyers.

## **H. OTHER MATTERS**

### **1. ELECTION ADDRESSES**

- (1) Where a solicitor is a candidate for election to public office or publicly supporting or endorsing any candidate for election to public office then, subject to the provisions of paragraph 2, a solicitor may:
  - (i) be so described in an election address to constituents;
  - (ii) be so described in the body of a poster, banner, or other promotional material.
- (2) A solicitor shall in neither case allow:
  - (i) the name and address of the solicitor's firm to be mentioned;
  - (ii) any advertisement of his work as a solicitor.

## **I. PROFESSIONAL CONDUCT**

### **1. SURETY FOR BAIL**

The following is an extract from "The Professional Conduct of Solicitors (1993)" published by The Law Society of England & Wales.

#### **"22.10 Principle**

It is undesirable for a solicitor to offer to stand bail for a person for whom he or any partner is acting as solicitor or agent.

The Council considers that it is fundamental to the proper administration of justice that a surety for a person charged with a criminal offence or in relation to a civil matter must not be drawn from the ranks of that person's legal advisers, and adopts the principle enunciated in the cited publication.

The Council has decided that no solicitor or his employee may act as a surety for bail for a client of the firm without the prior consent of the Council, which consent would be forthcoming only in the most exceptional circumstances. Failure to comply with this Practice Direction may render the offender liable to disciplinary action.

This Practice Direction came into effect on 12 September 1994.

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

The Council has determined that solicitors in Hong Kong shall be required to comply with the standards of practice and rules of conduct set out in "The Hong Kong Solicitors' Guide to Professional Conduct" first published by the Law Society of Hong Kong in 1995 and revised from time to time.

This Practice Direction came into effect on 1 June 1995.

## J. INTEREST ON CLIENTS' ACCOUNT

### 1. REQUIREMENT TO PAY INTEREST

Subject to paragraph 2 hereof, on each occasion when a solicitor holds or receives money for or on account of a client in respect of a particular matter, the solicitor shall deposit such money in a designated interest bearing clients' account in a bank and shall account to the client for any interest earned thereon failing which the solicitor shall pay to the client a sum equivalent to the interest which would have accrued for the benefit of the client if the money had been deposited in a Hong Kong dollar savings account of the Hongkong and Shanghai Banking Corporation Limited.

### 2. MINIMUM AMOUNT AND TIME

A solicitor shall only be required to account in accordance with paragraph 1 above where the solicitor holds the money for as long as or longer than the time set out in the right hand column of the Table below and the minimum amount held equals or exceeds the corresponding figure in the left hand column of the Table:

**The Table**

Minimum Amount	Minimum Time
Exceeding \$3,000,000.00	4 Banking Days
Exceeding \$250,000.00 but not exceeding \$3,000,000.00	2 Weeks
Exceeding \$100,000.00 but not exceeding \$250,000.00	4 Weeks
Exceeding \$50,000.00 but not exceeding \$100,000.00	8 Weeks

### 3. REMEDY AVAILABLE TO CLIENT

Without prejudice to any other remedy which may be available to him, any client who feels aggrieved that interest, or a sum equivalent thereto, has not been paid to him under these Practice Directions shall be entitled to require the solicitor to obtain from the Council of the Law Society a certificate as to whether or not interest ought to have been earned for him, and if so, the amount of such interest. Upon receipt of such a request the Council shall cause the matter to be investigated and if it determines that interest should have been earned it shall issue a certificate to that effect setting out the amount of interest which should have been earned in accordance with these Practice Directions. On the issue of such a certificate the sum certified to be due shall be payable by the solicitor to the client.

### 4. EXCEPTIONS

Subject to paragraph 5 hereof nothing in the Practice Directions shall:

- (a) affect any agreement in writing whenever made between a solicitor and his client as to the application of the client's money or interest thereon;

- (b) apply to money received by a solicitor, being money subject to a trust of which the solicitor is a trustee; or
- (c) affect any agreement in writing for payment of interest on stakeholder money held by the solicitor.

**5. ARRANGEMENT FOR NO INTEREST SHALL BE VOID**

Any arrangement howsoever made to the effect that no interest shall be payable in respect of monies deposited with a solicitor shall be void.

**6. ADMINISTRATION FEE PERMITTED**

A solicitor who deposits a client's money in accordance with paragraph 1 hereof shall be entitled to charge and be paid such sum as is fair and reasonable by way of an administration charge in respect of the work undertaken in the deposit and withdrawal of monies and accounting to the client for the interest accrued thereon.

This Practice Direction came into effect on 1 January 1997.

## **K. CLIENT ACCOUNTS**

### **1. DUTY TO REMEDY BREACHES**

[Replaced by rule 9A of the Solicitors' Accounts Rules which came into effect on 1 February 2002.]

### **2. RECONCILIATION OF CLIENT ACCOUNTS**

[Replaced by rule 10A of the Solicitors' Accounts Rules which came into effect on 1 February 2002.]

### **3. GUIDELINES FOR ACCOUNTING PROCEDURES AND SYSTEMS**

The Council may from time to time publish Guidelines for accounting procedures and systems to assist solicitors to comply with the Solicitors' Accounts Rules, and solicitors may be required to justify any departure from the Guidelines. The Guidelines which have been adopted by the Council are at Appendix 5.

### **4. MONITORING ACCOUNTANT**

A solicitor or firm of solicitors must at the time and place fixed by the Council produce to any person appointed by the Council pursuant to rule 5B of the Solicitors' Practice Rules and rule 11 of the Solicitors' Accounts Rules any books of account, bank pass books, loose-leaf bank statements, statements of account, vouchers and other documents necessary to enable preparation of a report on compliance with the rules.

This Practice Direction came into effect on 1 September 2000.



## L. ATTESTATION OF DOCUMENTS

1. Where the signing / execution of documents is required by law or practice to be witnessed / attested by a solicitor, the solicitor should be physically present when witnessing / attesting the same where the attestation clause is in the following terms:-

"Signed by .....)  
in the presence of:- )

Solicitor, Hong Kong SAR"

Some solicitors have adopted the practice of attesting to the signature of a document when in fact they were not present and did not witness the actual signing of that document. The effect of this practice is that the resulting document contains a false and dishonest statement by the solicitor.

2. If it is impracticable for a solicitor to witness / attest the signing / execution of a document, which by law is not required to be so witnessed / attested, the Council has made the following directions:
  - (a) A firm of solicitors may appoint one or more experienced clerk or clerks for the purpose of witnessing / attesting the signing / execution of documents not required by law to be witnessed / attested by a solicitor.
  - (b) A clerk so appointed must be physically present when witnessing / attesting the signing / execution of documents.
  - (c) The signature of the appointed clerk who acted as witness shall be verified by a solicitor of the firm. The following clause is considered appropriate:

"I hereby verify the signature of (name of appointed clerk):-

Solicitor, Hong Kong SAR"

3. (a) Where a document is executed by a limited company, whether under seal or not, the signatures of directors / officers or attorneys appearing on the document may be verified by a solicitor if such signatures are known to the solicitor. The following clauses are considered appropriate:

"Sealed with the Common Seal of )  
ABC Co. Ltd. and signed by )  
.....(directors / )  
officers) whose signatures are )  
verified by:- )

Solicitor, Hong Kong SAR"

OR

"Signed by ..... )  
(directors / officers) for and )  
on behalf of ABC Co. Ltd. whose )  
signatures are verified by:- )

Solicitor, Hong Kong SAR"

OR

"Signed (Sealed and Delivered) )  
by .....(attorney(s)) )  
lawful attorney(s) for ABC Co. )  
Ltd. whose signature(s) is / are )  
verified by:- )

Solicitor, Hong Kong SAR"

- (b) Where a document is executed by a company in liquidation acting by its liquidator(s) / official receiver(s), whether under seal or not, the signature(s) of the liquidator(s) / official receiver(s) appearing on the document may be verified by a solicitor if such signature(s) is/are known to the solicitor. The following clauses are considered appropriate:

"Signed (Sealed and Delivered) )  
by .....(the official receiver(s) / )  
liquidators of ABC Co. Ltd.). )  
whose signature(s) is / are )  
verified by:- )

Solicitor, Hong Kong SAR"

OR

"Signed by ABC Co. Ltd. by its )  
official receiver(s), its liquidator(s) / )  
the liquidators whose signature(s) )  
is / are verified by:- )

Solicitor, Hong Kong SAR"

OR

Sealed with the Common Seal of )  
 ABC Co. Ltd. (in liquidation) and )  
 signed by .....(the official receiver(s), )  
 its liquidator(s) / the liquidator(s)) )  
 whose signature(s) is / are )  
 verified by:- )

Solicitor, Hong Kong SAR”

- (c) Where a document is executed by a receiver(s) appointed under a legal charge / mortgage / other security documents, whether under seal or not, the signature(s) of the receiver(s) appearing on the document may be verified by a solicitor if such signature(s) is/are known to the solicitor. The following clauses are considered appropriate:

“Signed (Sealed and Delivered) )  
 by .....(the duly appointed )  
 [joint and several] receiver(s) [and )  
 Manager(s)] of the Property )  
 without personal liability), )  
 whose signature(s) is / are )  
 verified by:- )

Solicitor, Hong Kong SAR”

OR

“Signed (Sealed and Delivered) )  
 by .....(the duly appointed )  
 [joint and several] receiver(s) )  
 for and on behalf of ABC Co. Ltd. )  
 without personal liability), )  
 whose signature(s) is / are )  
 verified by:- )

Solicitor, Hong Kong SAR”

- (d) Save as in paragraphs 3(a), (b) and (c) above, the signature of an individual must be attested (as opposed to verified) by a solicitor or his appointed clerk.
4. Solicitors and their clerks whose signatures appear on a document whether as witnesses, interpreters, identifiers, verifiers or certifiers should have their names and firm names or company names indicated in legible form in full immediately below their signatures unless their names and firm names or company names appear elsewhere in the same document. The date on which a document is certified must be indicated.

5. Hong Kong Identity Cards or other appropriate means of identification may be used for identification purposes.
6. This Practice Direction came into effect on 19 August 2002.

## M. LIMITATION OF LIABILITY BY CONTRACT

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

## APPENDIX 1

## REFERENCE TABLE

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

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

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



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

## APPENDIX 2

### FORM "A"

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

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

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

(the "Firm").

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

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

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

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

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

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

\* Delete if inapplicable

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

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

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

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

## APPENDIX 3

## FORM "B"

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

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

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

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

- (4) readily obey and execute the lawful and reasonable instructions of the Principal and not be absent from the employment of the Government without the consent of the Principal and to act with diligence, honesty and propriety; and
- (5) complete and maintain an adequate training record ("the Record") and have it available for inspection by the Principal (or, if appropriate, by the Society) until the Trainee Solicitor has been admitted as a Solicitor of the High Court of the Hong Kong Special Administrative Region. The Record shall belong to the Principal and shall be in such form as the Principal shall reasonably prescribe but shall take the style of a Diary of the work and experience of the Trainee Solicitor or a series of checklists covering the basic legal topics in which the Principal has agreed to give the Trainee Solicitor the opportunity of gaining experience as specified in clause 5(1)(b).
- (6) *\*(Insert any further clauses required, which must not override or negate the standard clauses).*

5. The Principal agrees to:-

- (1) provide the Trainee Solicitor with the opportunity (either in the Department or in another department of the Government under the supervision of an employee of the Government entitled to take trainee solicitors or in the office of a solicitor in private practice entitled to take trainee solicitors) to learn the basic skills and characteristics associated with the practice and profession of a solicitor and in particular to:
  - (a) provide the Trainee Solicitor with the opportunity to learn the principles of professional conduct and to practise a range of basic skills. These are:-
    - (i) communication
    - (ii) practice support
    - (iii) legal research
    - (iv) drafting
    - (v) interviewing
    - (vi) negotiation
    - (vii) advocacy.
  - (b) provide the Trainee Solicitor with proper training and experience in at least three of the following basic legal topics:-
    - (i) Banking
    - (ii) Civil Litigation
    - (iii) Commercial
    - (iv) Company
    - (v) Criminal Litigation
    - (vi) Family
    - (vii) Insolvency

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

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

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

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

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

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

\* Delete if inapplicable

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

## APPENDIX 4

### FORM "C"

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

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

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

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



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



## APPENDIX 5

### GUIDELINES FOR ACCOUNTING PROCEDURES AND SYSTEMS

#### 1. Introduction

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

#### 2. General

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

- (b) that the new system operates correctly before the old system is abandoned. This may require a period of parallel running of the old and new systems and the satisfactory reconciliation of the two sets of records before the old system ceases.
- (8) The firm should ensure that office account entries in relation to each client or trust matter are maintained up to date as well as the client account entries. Credit balances on office account in respect of client or trust matters should be fully investigated.
- (9) The firm should operate a system to identify promptly situations which may require the payment of deposit interest to clients.

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

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

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

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

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

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

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

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

## 5. Overall control of client accounts

- (1) The firm should maintain control of all its bank accounts opened for the purpose of holding client money and trust money. In the case of a joint account, a suitable degree of control should be exercised.
- (2) Central records or central registers must be kept in respect of:
  - (a) accounts held for client money, or trust money, which are not client accounts (rule 9(2)(a) of the Solicitors' Accounts Rules);
  - (b) joint accounts; and
  - (c) clients' own accounts (rule 9(2)(a) of the Solicitors' Accounts Rules).
- (3) In addition, there should be a master list of all general client accounts and office accounts. The master list should show the current status of each account; eg currently in operation or closed with the date of closure.
- (4) The firm should operate a system to ensure that accurate reconciliations of the client accounts, whether comprising client and/or trust money, are carried out once a calendar month. In particular it should ensure that:
  - (a) a full list of client ledger balances is produced. Any debit balances should be listed, fully investigated and rectified immediately. The total of any debit balances cannot be "netted off" against the total credit balances;
  - (b) a full list of unpresented cheques is produced;
  - (c) a list of outstanding lodgments is produced;
  - (d) formal statements are produced reconciling the client account cash book balances, aggregate client ledger balances and the client bank accounts. All unresolved differences must be investigated and, where appropriate, corrective action taken;
  - (e) a partner checks the reconciliation statement and any corrective action, and ensures that enquiries are made into any unusual or apparently unsatisfactory items or still unresolved matters.

- (5) Where a computerised system is used, the firm should have clear policies, systems and procedures to control access to client accounts by determining the personnel who should have "write to" and "read only" access. Passwords should be held confidentially by designated personnel and changed regularly to maintain security. Access to the system should not necessarily be restricted to a single person nor should more people than necessary be given access.
- (6) The firm should establish policies and systems for the retention of the accounting records to ensure:
  - books of account, reconciliations, bills, bank statements and passbooks are kept for at least six years;
  - paid cheques and other authorities for the withdrawal of money from a client account are kept for at least two years;
  - other vouchers and internal expenditure authorisation documents relating directly to entries in the client account books are kept for at least two years.
- (7) The firm should ensure that unused client account cheques are stored securely to prevent unauthorised access. Blank cheques should not be pre-signed. Any cancelled cheques should be retained.