

THE LAW SOCIETY OF HONG KONG

PREVENTION OF BRIBERY ORDINANCE CAP. 201

ENQUIRIES BY I.C.A.C.

GUIDELINES FOR SOLICITORS

1. The Law Society has been approached by many solicitors seeking advice regarding requests for information made by I.C.A.C. under the powers given to it under the above Ordinance.
2. It was decided to appoint a Sub-Committee to prepare general guidelines for solicitors. These guidelines have been discussed with the Attorney General's Department as legal advisers to I.C.A.C.
3. Requests by third parties for privileged information are not uncommon and normally a solicitor will refer to his client for written confirmation that the information requested may be divulged. In the case of this Ordinance it is an offence to disclose to any person that I.C.A.C. are making investigations and a solicitor cannot therefore follow the usual practice.
4. A solicitor receiving a request from I.C.A.C. in respect of privileged information must therefore, and without reference to his client, decide whether or not the information is privileged and, if it is, to decide whether or not he is under the terms of the Ordinance obligated to release it. These guidelines are not intended to absolve a solicitor from on the one hand his duties to his clients and on the other his obligations under the Ordinance but to provide an outline which can be used by both solicitors and I.C.A.C.
5. It is also hoped these guidelines will facilitate the procedures between solicitors and I.C.A.C. so that in general cases routine enquiries can be made and answered with a minimum of inconvenience to both sides. It must be emphasised that neither the Law Society nor I.C.A.C. regard these guidelines as exhaustive or binding. They provide no answer to any solicitor whose client may feel aggrieved by the disclosure of his affairs nor of course do they constitute any kind of ruling/admission for Court purposes. I.C.A.C. in following these guidelines do not waive the express statutory powers granted to its officers under the Ordinance.
6. (a) I.C.A.C. will normally serve upon a solicitor a formal notice under Section 14(1)(d) before requesting any information. Such notice will be addressed to the Principal or Senior Partner in the firm and will if practicable identify the firm's reference and the solicitor in the firm who handled the transaction. I.C.A.C. will deliver the notice in a sealed envelope marked confidential and addressed to the Principal or Senior Partner personally or will send it to him by registered post, as may be most convenient. Receipt of this notice should be acknowledged in writing to I.C.A.C. as soon as possible.
(b) If I.C.A.C. wishes to obtain information under Section 13(2) that is to enquire of the solicitor whether any of the items listed in that section are in his possession then a written demand will

be made in accordance with Section 13(2)(b). A question under this section calls for only a simple "Yes" or "No" reply so that the use of this section where a solicitor is concerned is likely to be fairly rare.

7. (1) The notice will :-

- (a) Specify the particular transaction or transactions in respect of which information is being sought.
- (b) Require the named solicitor to furnish to the investigating officer all information in his possession relating to the matters specified in a schedule to the notice and relevant to those transactions.
- (c) Require the solicitor to furnish on demand to the investigating officer the originals or copies of relevant documents in his possession or under his control (Section 14(1)(d)).

(2) The schedule to the notice will list in detail the information which is required. It will include a request for the name of any person who can explain the relevant accounts (ledger sheets) if necessary or who would be the proper person to produce the accounts and any other documents the examination of which may be required. Any further questions to which the officer seeks an answer could also be included in this schedule. A covering letter or other attachment may specify the documents which the investigating officer considers relevant.

8. The solicitor will supply the relevant information by letter. Should clarification be required a phone call to the solicitor may clear up the point. However, clarification and further clarification by letter may be sought.

9. Please note that in many cases a copy of the solicitor's ledger card will suffice but the solicitor must advise the name of a person (it can be the solicitor concerned but preferably will be a member of his accounts staff) who can explain any abbreviations, symbols etc. used.

10. The Society has received many requests for advice as to what information must be disclosed and what information a solicitor must refuse to disclose without his client's consent which, of course, he cannot obtain. Normally the Society is not prepared to offer advice on the correct interpretation of Ordinances or Regulations and solicitors must refer to Counsel if they are unable to take a position themselves after perusal of the relevant authorities. This Ordinance is however exceptional and it has been decided to offer guidance in this area.

11. The information that you can be required to disclose to an investigating Officer is listed in 3 Sections :-

(a) Under Section 13(2)(a)

Under this Sub-section you may be asked in writing whether you have any account book document safe deposit box or other article liable to inspection

or production under an authorisation given under Section 13(1)(a). This calls for an answer "Yes" or "No". No actual production or inspection can be demanded. You are being asked only whether or not it exists.

(b) Under Section 14(2)

Under this Sub-section you may be asked to disclose information relating to land or property dealings. This sub-section calls for the identity and address of the parties to the transaction, the financial detail which will include all money paid to you or paid out by you, details of all vouchers receipts paying-in slips and ledger cards debit notes and payments for costs and disbursements. In addition you must disclose details of the documents as executed whether or not such documents are registered in the Land Office. In particular copies of sale and purchase agreements and declarations of trust whether registered or not may be sought. Please refer to Section 14(2)(b)(i), (ii) and (iii). You need not disclose draft documents, notes made by you, correspondence to or from your client nor need you disclose details of instructions given orally. You must however disclose any document which relates to the land or to a property dealing, and in particular any unregistered declaration of trust showing the true beneficial ownership of the land or any part thereof must be produced.

(c) Under Section 15(3)

Under this Sub-section you can be asked to disclose whether you have acted for a person in connection with the transfer of money out of the Colony or with the investment within or outside the Colony of any moneys and to give full details of such transfer and/or investment and the investment associated with it. Please refer to the matters listed in Section 15(3)(b)(i), (ii), (iii) and (iv).

12. Solicitors are by training and nature very reluctant to disclose any part of their clients' affairs to third parties. The duties of disclosure laid down by Cap. 201 are recognised as exceptions to the general rule. However these exceptions are statutory duties and must be complied with to the utmost of your ability. The Society and I.C.A.C. recognise that the recovery of large amounts of detailed information is time consuming for which you cannot charge your client or anybody else. However the statutory obligations imposed upon I.C.A.C. leave them with no choice but to seek this information whenever it may be found.

13. You are reminded that the powers provided for under Part III of the Ordinance relate to the powers of investigation by I.C.A.C. officers. Your duty of secrecy in relation to any person who is not both an I.C.A.C. officer duly authorised under Section 13(1) who has in addition served upon you a notice under Section 14(1)(d) remain. The general rule as to the secrecy of privileged information is restated in Section 15(1) of the Ordinance. It follows therefore that you must respect your client's privilege in all other instances unless he has first waived it. Solicitors are reminded that where they are subpoenaed to attend Court proceedings whether at the request of I.C.A.C. or any other person they must attend and if privileged information is sought during the proceedings they must claim the privilege in the usual way.

Specimen Form A

To : (named solicitor)

Address

Dear Sir,

Prevention of Bribery Ordinance

Chapter 201

Notice under Section 14(1)(d)

An investigation is being made into an offence suspected of having been committed under the Prevention of Bribery Ordinance, Chapter 201, by of

I believe that you are acquainted with facts relevant to the above investigation, you having acted for a party in the property transactions set out below and, in exercise of the powers conferred on me by Section 14(1)(d), and Section 14(2) of this Ordinance, by this written notice I require you to furnish to, an Investigating Officer of the Independent Commission Against Corruption, the following information namely :-

- (a) in relation to the purchase by A B of the property situate at (land office and postal description) as indicated in a Deed/Assignment/Sale & Purchase agreement dated memorial number your reference (or witnessed by Mr. DEF of your firm) all information in your possession respecting such matters as are specified in the attached schedule, in paragraph (a) thereof; and
- (b) in relation to the sale by C .. D of the property situate at (land office and postal description) as indicated in a Deed/Assignment/Sale & Purchase agreement dated Memorial Number your reference (or witnessed by Mr. XYZ of your firm) all information in your possession respecting such matters as are specified in the attached schedule, in paragraph (b) thereof, and

on demand by the said investigating officer to produce or deliver or otherwise furnish to him the original or a copy of any document in your possession or under your control which, in his opinion may be relevant to such land or property transaction.

Failure or neglect to comply with the terms of this notice without reasonable excuse is an offence under Section 14(4) of the Prevention of Bribery Ordinance, Chapter 201, Laws of Hong Kong, and the wilful making of any false statement in answer to this notice is also an offence under Section 14(5) of the said Ordinance, with a liability of a fine of \$20,000 and to imprisonment for one year.

Specimen Form A

I hereby specify a period of from the
date hereof as the period within which you must comply with the
terms of this notice.

DATED this day of 197

for Commissioner,
Independent Commission Against Corruption

/(a) In relation

Specimen Form A

SCHEDULE

(a) In relation to the purchase by A B
of the property situated at state :-

- (1) the price paid for the property;
- (2) the date the purchase price was paid and, if paid by instalments, the amounts and dates of such payments;
- (3) the manner in which each payment was made, whether by cheque or in cash, and from which bank account derived, or from whom received;
- (4) the name and address of the person from whom the property was purchased; and
- (5) the full name (including aliases) and addresses, and any other information in your possession which may be helpful in the identification and location of any person, or any employee of any person who :
 - i) acted for vendor in the above property transaction;
 - ii) was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange respecting the above property transaction.

(b) In relation to the sale by C..... D.....
of the property situated at state :-

- (1) the price paid for the property;
- (2) the date the purchase price was paid and, if paid by instalments, the amounts and dates of such payments;
- (3) the manner in which each payment was made, whether by cheque or in cash, and from which bank account derived, or from whom received;
- (4) the name and address of the purchaser;
- (5) the full name (including aliases) and addresses, and any other information in your possession which may be helpful in the identification and location of any person, or any employee of any person who :
 - i) acted for purchaser in the above property transaction;
 - ii) was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting the above property transaction.

14. In respect of information that is not privileged a solicitor is in no difficult position from anybody else. The entire duty of disclosure as provided for in Sections 13 and 14 will apply.

15. You are invited to contact the Committee of any particular problems you have encountered with these enquiries. Please give as much detail as you can so that if the Committee feel that the matter should be taken up no time will be lost.

Specimen Form B

To : (named solicitor)

Address

Dear Sir,

Prevention of Bribery Ordinance

Chapter 201

Notice under Section 14(1)(d)

An investigation is being made into an offence suspected of having been committed under the Prevention of Bribery Ordinance, Chapter 201, by of

I believe that you are acquainted with facts relevant to the above investigation, you having acted for a party in the transactions set out below, and in exercise of the powers conferred on me by Section 14(1)(d) and Section 15(3) of this Ordinance, by this written notice I require you to furnish to, and Investigating Officer of the Independent Commission Against Corruption, the following information, namely:-

- (a) in relation to the transfer by of any moneys out of the Colony, state whether you have at any time during the period between and acted on behalf of the person named or otherwise identified in this notice, and if so furnish information in your possession with respect to such matters as are specified in the attached schedule, in paragraph (a) thereof, and
- (b) in relation to the investment by within or outside the Colony of any moneys, state whether you have at any time during the period between and acted on behalf of the person named or otherwise identified in this notice, and if so furnish information in your possession with respect to such matters as are specified in the attached schedule, in paragraph (b) thereof:

and on demand by the said to produce or deliver or otherwise furnish to the said the original or a copy of any document in your possession or under your control which, in the opinion of the said may be relevant to such transfer of money or investment.

Failure or neglect to comply with the terms of this notice without reasonable excuse is an offence under Section 14(4) of the Prevention of Bribery Ordinance, Chapter 201, Laws of Hong Kong, and the wilful making of any false statement in answer to this notice is also an offence under Section 14(5) of the said Ordinance, with a liability of a fine of \$20,000 and to imprisonment for one year.

Specimen Form B

I hereby specify a period of from
the date hereof as the period within which you must comply with
the terms of this notice.

DATED this day of 197

for Commissioner,
Independent Commission Against Corruption

/a) In relation

Specimen Form B

SCHEDULE

- a) In relation to the transfer by
of moneys out of the Colony, state :-
- (i) the date of the transfer,
 - (ii) the amount of the transfer,
 - (iii) the name and address of the bank and the name and
number (if any) of the account to which the money
was transferred :
- b) In relation to the investment by
within or outside the Colony of any moneys, state :-
- (i) the date of the investment,
 - (ii) the amount of the investment,
 - (iii) the nature of the investment.