



## *Index Reference :*

**Law Society: General**

**CIRCULAR 24-872 (SD)**

**19 December 2024**

## **24-872 (SD) LAW SOCIETY GUIDANCE NOTE** **Storage and Destruction of Old Files** **Revised**

What is a file?

A file should contain all documents and materials which have been created or received in the course of or for the purpose of handling the matter for client. Apart from documents and electronic versions of documents and materials, it may contain other materials, such as physical items including keys, physical samples etc.

### **1. Ownership of documents and materials**

The **first task** which should take place upon the conclusion of the retainer is a thorough review of the file to determine the ownership of the documents and materials. Members should review the following principles derived from “Authority over documents on termination of retainer” in Cordery’s Law relating to Solicitors (8<sup>th</sup> edition):-

#### **“Is the client entitled to the whole file once the retainer is terminated?”**

Not necessarily. Most files will contain some documents and materials which belong to you, some which belong to the client and possibly others belonging to a third party. Documents and materials in existence before the retainer, held by you as agent for and on behalf of the client or a third party, must be dealt with in accordance with the instructions of the client or third party (subject to your lien). Documents and materials coming into existence during the retainer fall into four broad categories.

#### **(a) Documents and materials prepared by you for the benefit of the client and which have been paid for by the client, either directly or indirectly, belong to the client.**

*Examples:* instructions and briefs; most attendance notes; drafts; copies made for the client's benefit of letters received by you; copies of letters written by you to third parties if contained in the client's case file and used for the purpose of the client's business; physical objects provided by the client as reference or evidence in the case. There would appear to be a distinction between copies of letters written

to the client (which may be retained by you) and copies of letters written to third parties.

- (b) **Documents and materials prepared by you for your own benefit or protection, the preparation of which is not regarded as an item chargeable against the client, belong to you.**

*Examples:* copies of letters written to the client; copies made for your own benefit of letters received by you; copies of letters written by you to third parties if contained only in a filing system of all letters written in your office; tape recordings of conversations; inter-office memoranda; entries in diaries; time sheets; computerised records; office journals; books of account. Photographs or other reference materials prepared or procured by you as background research to understanding an area of law, or the case and not paid for by client, belong to you.

- (c) **Documents and materials sent to you by the client during the retainer, the property in which was intended at the date of despatch to pass from the client to you, belong to you.**

*Examples:* letters, authorities and instructions written or given to you by the client.

- (d) **Documents and materials prepared or provided by a third party during the course of the retainer and sent to you (other than at your expense) belong to the client.**

*Examples:* receipts and vouchers for disbursements made by you on behalf of the client; medical and witness reports; counsel's advice and opinions; letters received by you from third parties. Other examples are infringing items delivered up by defendants, keys to the client's property.

## 2. Retention of old files

The following are *guidelines* on the *minimum* retention period of old files:-

Conveyancing	15 years (See paragraphs 5B (a) and 8 below)
Tenancy	7 years from expiration of the tenancy agreement (See sections 51C and 51D of the Inland Revenue Ordinance Cap.112)
General files	7 years (See sections 51C and 51D of the Inland Revenue Ordinance Cap.112)
Criminal cases	5 years from the expiration of any appeal period (See paragraph 20 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance Cap. 615)

### \*Title deeds and other original documents and materials

Solicitors should clarify the scope of the retainer in relation to the retention of title deeds and other original documents and materials. If the retainer does not extend to their safe custody,

solicitors should write to the client and seek instructions on returning them. If the client fails to provide instructions, solicitors may write to the client to advise that a “storage charge” fee will be charged for their safe custody. The level of any fee will be a matter for the solicitor to decide and is obviously a contractual matter with the client. Solicitors should note however that it is **not good conveyancing practice** to hold original title deeds with the file.

### 3. Storage of old physical files in Hong Kong Law Society’s Practice Direction D7 (June 2012)

All old physical files must be stored in Hong Kong in order to ensure inter alia the preservation of confidentiality easy retrieval and compliance with Law Society regulations.

Click [here](#) for a copy of Law Society’s Practice Direction D7(6). Click [here](#) for a copy of Principle 8.01 Commentary 35 of the Hong Kong Solicitors’ Guide to Professional Conduct Vol.1 third edition (“the Guide”).

### 4. Storage of electronic documents and materials/files and their backup copies (May 2024)

Solicitors can elect to store all their old files and backup copies electronically, provided that they comply with Circular 24-351 (as amended or replaced from time to time).

### 5. Destruction of original documents and materials

#### A. Generally

Original documents and materials such as those set out in paragraphs 5B(a) and (c), which are not your own property, should not be destroyed without the express written permission of the owner. Where the work has been completed and the bill paid, other documents and materials, including your file other than those falling under paragraphs 5B(a) and (c), may be scanned and then destroyed. In cases of doubt the owner's written permission should always be sought. If it is not possible to obtain such permission you will have to form a view and evaluate the risk.

#### B. Original documents and materials which should not be destroyed –

##### (a) Schedule 1 of the Electronic Transactions Ordinance (“ETO”) (Cap.553)

The Schedule identifies 13 types of documents which must be kept as originals:-

- “1. The creation, execution, variation, revocation, revival or rectification of a will, codicil or any other testamentary document.
2. The creation, execution, variation or revocation of a trust (other than resulting, implied or constructive trusts).
3. The creation, execution, variation or revocation of a power of attorney.



4. The making, execution or making and execution of any instrument which is required to be stamped or endorsed under the Stamp Duty Ordinance (Cap 117) other than a contract note to which an agreement under section 5A of that Ordinance relates.
5. Government conditions of grant and Government leases.
6. Any deed, conveyance or other document or instrument in writing, judgments, and lis pendens referred to in the Land Registration Ordinance (Cap 128) by which any parcels of ground tenements or premises in Hong Kong may be affected.
7. Any assignment, mortgage or legal charge within the meaning of the Conveyancing and Property Ordinance (Cap 219) or any other contract relating to or effecting the disposition of immovable property or an interest in immovable property.
8. A document effecting a floating charge referred to in section 2A of the Land Registration Ordinance (Cap 128).
9. Oaths and affidavits.
10. Statutory declarations.
11. Judgments (in addition to those referred to in section 6) or orders of court.
12. A warrant issued by a court or a magistrate.
13. Negotiable instruments (but excluding cheques that bear the words “not negotiable”).”

**(b) Business records in electronic format**

The Inland Revenue Department (IRD) has advised that retention of business records in electronic format should meet the requirements set out in sections 7 and 8 of the ETO.

Click [here](#) to view the IRD’s letter dated 5 December 2024.

**(c) Physical materials**

Physical materials, e.g. common seal and samples which cannot be electronically reproduced and stored.

**6. Admissibility of electronic documents before the courts**

Solicitors should review the provisions of sections 46, 53 and 54 of the Evidence Ordinance (Cap.8) (EO) which deals with admissibility of documents in court proceedings.

**(a) Civil proceedings**

The broad and general definitions of “copy” and “document” in the EO will allow for the

admission of business records stored electronically.

### **(b) Criminal proceedings**

Documents produced by computer are admissible under sections 22A and 22B of the EO.

## **7. Duty of confidentiality**

Solicitors should review Chapter 8 on the Duty of Confidentiality in the Guide and ensure destruction of the file does not jeopardise the confidentiality of its contents.

## **8. Destruction of old files**

The responsibility for the decision to destroy a file remains with individual solicitors.

The Law Society recommends that *once the retainer is terminated* all documents and materials, which belong to the client, should be returned to the client. The failure to do so may cause future difficulties as original documents and materials, such as deeds, guarantees or certificates which belong to the client should not be destroyed without the *express written permission of the owner*.

Upon expiration of the appropriate retention period for closed files, solicitors should ensure the files are destroyed in a secure manner by engaging a suitable commercial provider.

## **9. Commercial providers of record management/scanning services**

**(a)** Solicitors who wish to engage commercial providers should ensure the confidentiality of the file is maintained.

**(b)** Commercial providers should provide an appropriate affidavit on the scanning services provided in compliance with the requirements of the EO:

- Identification of the document(s) scanned
- Date of scanning
- Identity of employee responsible for the scanning
- Type of machine used
- Whether the “hard copies” have been destroyed

**Circular 02-385(COM) has been superseded (June 2012).**

## **10. Retrieval charges**

Solicitors should arrange to return all of the clients’ documents and materials upon termination of the retainer. However, if the client wishes the firm to retain his personal documents and materials, the firm should enter into a written agreement with the client that the firm will provide such service upon payment of appropriate storage *and* retrieval charges.



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11. Solicitors are reminded of their legal obligations to protect their clients' personal data under the Personal Data (Privacy) Ordinance Cap.486.
12. References herein to the Guide, Practice Direction(s), Circular(s), Ordinance(s), subsidiary legislation(s) and Hong Kong Basic Law may, as the context requires, refer to the Guide, Practice Direction(s), Circular(s), Ordinance(s), subsidiary legislation(s) and Hong Kong Basic Law as the same may be amended or replaced from time to time.
13. **Circulars 01-371 (PA) and 12-475 (PA) have been superseded (19 December 2024). The guidelines contained in this Circular come into operation upon the issuance of this Circular and are applicable to the existing documents and materials continue to be kept by solicitors.**

**Members should note the contents of paragraph 3 of this Circular are mandatory.**