

CHAPTER 2

A SOLICITOR'S PRACTICE

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added on
15/06/2023 as per
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2.01 Practising certificates

A solicitor who does not hold a practising certificate is not qualified to act as a solicitor in private practice (*Legal Practitioners Ordinance* (Cap. 159), section 7).

A sole practitioner or partner must hold an unconditional practising certificate (*Legal Practitioners Ordinance* (Cap. 159), sections 6(6) & 6(6A)).

Commentary

1. The absence of a person's name from the list of solicitors with practising certificates published in the *Government Gazette* raises a presumption that the person concerned is not qualified to act as a solicitor: *Legal Practitioners Ordinance* (Cap. 159), section 6(8).
2. The consequences of a solicitor acting as a solicitor without a practising certificate are set out in the *Legal Practitioners Ordinance* (Cap. 159) (for example, see section 45). In addition, this may have consequences for any relevant partnership.
3. If a salaried partner's name appears on the headed notepaper of a firm without distinction from the equity partners' names, he will be treated by the Law Society as if he were a full partner and as holding or receiving clients' money irrespective of whether he can operate the firm's client accounts. If a salaried partner is held out as a partner, he must accept responsibility for the books of the firm and for any breach of the *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F). This is so, even if he is not permitted access to the books.
4. Subject to any exemption by the Council, every solicitor who is or is held out to the public as a solicitor in practice in Hong Kong must comply with the *Solicitors (Professional Indemnity) Rules* (Cap. 159, sub. leg. M). (see rules 6(1) & 7(1)).
5. A solicitor employed in private practice, regardless of whether his name appears on the headed notepaper, must hold a current practising certificate if he is held out as a solicitor or if he:
 - (a) appears before any court of record or certain tribunals (section 45 of the *Legal Practitioners Ordinance* (Cap. 159));
 - (b) supervises or manages an office of his employer (rule 4A of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H));
 - (c) administers oaths and takes declarations (section 7A of the *Legal Practitioners Ordinance* (Cap. 159));
 - (d) receives a share of the profits (rule 4 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H)).

2.02 Commencement and cessation of practice

Upon commencement of a practice the principal or principals must comply with rules 5(1) & (1A) of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and thereafter comply with rules 5(2) & (3).

Commentary

1. Rules 5(1) & (1A) of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) require a firm to provide the following information to the Law Society in a form approved by the Law Society within 14 days of commencing the firm's practice:
 - (a) the names of all the principals in the firm, and whether they are engaged by the firm full-time or part-time;
 - (b) the names of all the solicitors in the firm, and whether they are engaged by the firm full-time or part-time;
 - (c) the names and such other details of all unqualified persons employed by the firm, whether full-time or part-time, remunerated or otherwise as may be required by the Law Society;
 - (d) the address or addresses (including electronic address) of the firm together with telephone, fax, telex and DX numbers, where appropriate;
 - (e) the firm's name;
 - (f) evidence that the firm has complied with the *Solicitors (Professional Indemnity) Rules* (Cap. 159 sub. leg. M) from the date of commencement of practice;
 - (g) the accounting period to be used by the firm; and
 - (h) the name and details of any service company engaged by the firm and particulars of any employee of the service company, whether or not the employee has been provided as staff of the firm and whether full-time or part-time, remunerated or otherwise and whether or not the employee is a solicitor (see Principle 2.07 Commentary 3).
2. A principal of a firm commencing business shall also provide the date of commencement of business in a form approved by the Law Society within 14 days of commencing the firm's practice.
3. Rule 5(2) requires a firm to advise the Law Society of any changes to the information in a form approved by the Law Society within 14 days of the change.
4. Rule 5(3) requires a firm to deliver a return of employees on or before 31 January each year. The return must list details of all staff who are not solicitors and their salaries and bonuses.

5. For guidance on cessation of practice, see Practice Direction D.7 and Circular 12-641.
6. For guidance on cessation of practice for foreign firms, see Practice Direction Q and Circular 10-171.

2.03 Principal's individual responsibility

A principal is prima facie responsible for the acts or omissions of his firm and this extends to the acts or omissions of his partners and staff.

Commentary

1. A principal cannot escape responsibility for work carried out in the course of his practice by leaving it to his staff, however well qualified.
2. Specific applications of this general principle are set out in the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) with which all solicitors must comply.
3. Every principal is personally responsible for complying with the *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F) and the *Accountant's Report Rules* (Cap. 159 sub. leg. A). All the principals will be liable to disciplinary action if there is a failure to comply with these Rules.
4. See rule 1A of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) as to the definition of 'principal'.

2.04 Standards of supervision and management

Solicitors shall ensure that every office where they or their firms practise is and can reasonably be seen to be supervised and managed in accordance with rules 4A and 4B of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H).

Commentary

1. Rule 4A of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) provides:

'A solicitor shall ensure that every office where he or his firm practise is and can reasonably be seen to be properly supervised in accordance with the following minimum standards:

- (a) every such office shall be managed by a solicitor holding a current practising certificate who shall normally be in attendance at that office during all the hours when it is open to the public; and
- (b) every such office shall be attended on each day when it is open to the public by a solicitor who holds an unconditional practising certificate and has been admitted for at least two years (or such other period as the Council may permit), being either a principal of, or a solicitor employed by, the firm and who shall spend sufficient time at such office to ensure adequate control of the staff employed there and afford requisite facilities for consultation with clients.'

An 'unconditional practising certificate' is defined in the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) as 'a practising certificate that does not contain a condition preventing its holder from practising on his own account or in partnership'.

2. Rule 4B of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) provides:

'(1) A firm shall not employ unqualified persons in a number more than six plus eight times the number of resident principals and solicitors employed full time in that firm.

(2) No firm shall, except with the written approval of the Council, knowingly employ any unqualified person who is in the part-time or full-time employment of another firm.

(3) For the purpose of this Rule:

- (a) persons employed otherwise than by the firm (such as by a service company set up by the principal or principals of the firm) but for the purposes of the firm shall be deemed to be persons employed in that firm;
- (b) in calculating the number of unqualified persons employed in a firm, trainee solicitors and full-time law students working full-time or part-time during holidays and breaks or part-time during the academic year shall not be taken into account; and

- (c) in calculating the number of resident principals and solicitors employed full-time in a firm, a solicitor shall not be taken into account in respect of more than one firm.
 - (4) A firm shall ensure that every name card of an employee who is an unqualified person, being a card which bears the name of the firm, includes a clear description of the capacity in which the employee is being employed.'
3. It is a disciplinary offence not to comply with any Practice Directions on practice supervision published by the Law Society. Examples of some of the important matters covered by the Practice Directions are:
- (a) letters in the name of a firm issued in the course of its professional practice must be signed by an approved signatory of the firm (Practice Direction D.2);
 - (b) a solicitor must exercise control over, and personally supervise or verify any signing or attestation of documents;
 - (c) a solicitor must not share his office or staff with another business or person other than:
 - (i) another solicitor with whom he is in partnership; or
 - (ii) with one or more foreign firms with which there is a registered Association; or
 - (iii) with one or more Hong Kong firms with which there is a formal association; or
 - (iv) with a Mainland law firm with which there is a registered association in the Mainland.

2.05 Absence of sole principal

A sole principal should make suitable arrangements for the running of a practice during a period of absence.

Commentary

1. When a sole principal is absent from his office for whatever reason (holiday, sickness, etc.), he owes a continuing duty to his clients to ensure that his practice will be carried on with the minimum interruption to his clients' business. Consequently, he must make adequate arrangements for his practice (including his firm's client accounts) to be administered and properly supervised during his absence. The degree of supervision required must depend upon the circumstances but regard must be had to the minimum standards of supervision required by rule 4A of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H).

2. A sole principal should make adequate arrangements in advance to cope with the difficulties which will arise in the event of his incapacity. For example, an accountant's report must be submitted, a practising certificate must be applied for and indemnity cover must be obtained notwithstanding his incapacity. Consequently, a sole practitioner must have a standing arrangement with another solicitor, who is of sufficient seniority and who holds a current practising certificate, to supervise his practice until such time as he returns. Further, he must notify his bankers in advance of these arrangements so that the other solicitor can operate his client and office accounts.
3. Before any responsibility or duty is assumed by such other solicitor he must contact the manager appointed by the Hong Kong Solicitors Indemnity Fund Limited to ensure that cover remains in force under the *Solicitors (Professional Indemnity) Rules* (Cap. 159 sub. leg. M). Insurers writing top-up cover or excess cover for both a sole practitioner's practice and the practice of such other solicitor should be notified immediately of the arrangements that have been made. Unless the absence of the sole practitioner is likely to be of short duration, clients of the practice should be informed as should the Law Society.
4. If a sole principal has employed or is acting as the principal of a trainee solicitor under a trainee solicitor contract, the sole principal must make suitable alternative arrangement for the trainee solicitor to be properly supervised by another solicitor within the principal's firm who is eligible to act as principal under Section 20(1) of the *Legal Practitioners Ordinance* (Cap. 159) during a prolonged period of absence of the sole principal from his office. If no other solicitor is eligible under Section 20(1) of the *Legal Practitioners Ordinance* (Cap. 159) within the principal's firm, the sole principal may consider making alternative arrangement pursuant to rule 9(3) of the *Trainee Solicitors Rules* (Cap. 159 sub. leg. J) for the trainee solicitor to be employed in the office of another solicitor or qualified person who is eligible under Section 20(1) of the *Legal Practitioners Ordinance* (Cap. 159) to act as the principal of the trainee.

added on
15/06/2023 as per
Circular 23-363

2.06 Arrangements on death of sole principal

A sole practitioner must make a will containing provisions for the management of his practice after his death.

Commentary

1. Although it is not essential for him to appoint a solicitor as an executor, if he does so, this will greatly facilitate the conduct of his practice after his death.
2. In any event, clear instructions should be left by the sole practitioner to ensure that his executors are able to make arrangements immediately after his death for the continuance of his practice by a solicitor of sufficient seniority, pending the disposal of the practice.
3. A personal representative of a deceased sole practitioner has no power to sign cheques on the client accounts of the deceased sole practitioner. This power is vested in the Council under section 4, Schedule 2 of the *Legal Practitioners Ordinance* (Cap. 159).
4. The Council has power to control a deceased solicitor's practice in certain circumstances: see section 26B of the *Legal Practitioners Ordinance* (Cap. 159).

2.07 Companies serving clients and the firm

A solicitor shall not by himself or with any other person set up or operate a separate business, other than a solicitor's practice, which offers any service which may normally be offered by a solicitor as part of his practice. This Principle shall not apply to a wholly-owned executor and trustee company, nominee company or company to provide company secretarial services. Subject to applicable statutory conditions a solicitor may form a service company.

Commentary

1. The formation of a service company to carry out necessary administrative functions concerned with the running of the practice, for example, the provision of staff, hiring premises, furniture and equipment and general maintenance, is permitted, provided the directors and shareholders of the company are partners of or solicitors employed in the firm (see Circular 06-337).
2. Solicitors who form such a company will be responsible for ensuring that the company is not used as a means to avoid or evade the requirements of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H), for example, to share profits with unqualified persons, and that the company is at all times operated in compliance with the rules of professional conduct as if it were part of the solicitors' practice.
3. Solicitors are permitted to form a service company provided the directors and shareholders of the company are partners of or solicitors employed in the firm. The name of the company can be similar to the name of the firm of solicitors controlling it. Clients who use this service must be informed of the nature of the company and whether a solicitor will or may thereby obtain or has thereby obtained a personal interest or benefit. Disclosure should be in a manner that will be understood by the client, and preferably in writing (see Principle 7.03).
4. See also rules 4B and 5(1A) of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and Principle 2.02 Commentary 1(h).

2.08 Employed solicitors

A solicitor who works for a non-solicitor employer must comply with the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H), Practice Directions and the rules and principles of professional conduct.

Commentary

1. See Practice Direction N.
2. This obligation takes priority over any conflicting demands or requirements of the non-solicitor employer.
3. A solicitor employed by a non-solicitor employer should have particular regard to rule 4 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and section 49 of the *Legal Practitioners Ordinance* (Cap. 159).
4. An employed solicitor shall have regard to the applicability of legal professional privilege when advising his non-solicitor employer.

APPENDICES

PRINCIPLE 2.02 COMMENTARY 5

CIRCULAR 12-641

27 August 2012

LAW SOCIETY GUIDELINES

CESSATION OF PRACTICE Updated August 2012

The Revised Guidelines came into effect on 2 August 2004.

Cessation of Practice means the ceasing of practice as such by a Hong Kong firm.

'Cessation' occurs or may occur on:

- (a) the retirement of a sole practitioner; or
- (b) the closure of a practice by a partnership; or
- (c) the retirement of a partner from a partnership; or
- (d) the amalgamation of 2 existing firms; or
- (e) where an existing firm is dissolved and the partners divide into two or more new firms.

1. Notification to the Society

If your firm intends to cease practice you should notify the Society at least 8 weeks prior to the date of Cessation by completing the Notice of Cessation of Practice form ('the Cessation Notice'). The Society must be notified of the firm of solicitors which will act as your Agent (see paragraph 2 below).

Click [here](#) for a copy of the Cessation Notice and Guidance Notes (updated August 2012)

2. Appointment of a Firm of Solicitors as Agent

(Revised March 2007)

When the firm ceases to practise, a firm of solicitors practising with at least 2 partners must be appointed to be the firm's Agent to deal with all consequential matters pursuant to Law Society Practice Direction D.7 as amended in October 2006. Firms which have been appointed as Agent should carefully review the Guidelines prepared by the Law Society on the duties and responsibilities of such appointment.

Click the link below for:

[Law Society Practice Direction D.7](#)

[Guidelines on Appointment as an Agent](#)

3. Notice to the Hong Kong Solicitors Indemnity Fund Limited ('HKSIF')
(Updated January 2012)

Notice of Cessation of practice must be given to HKSIF's Manager, Essar Insurance Services Ltd, whose current address and current contact details are:-

Essar Insurance Services Ltd. (FAO The Legal Officer)
28/Floor, Tower One
Times Square
1 Matheson Street, Causeway Bay, Hong Kong

Telephone no: 2861 6666 Fax: 2861 6560

4. Notice to Clients

(a) You must give sufficient notice to your clients with a view to avoiding any prejudice to your clients' interests and affording your clients adequate opportunity to take such steps as they consider appropriate in the circumstances. What will be sufficient notice will depend upon the particular circumstances of your firm and of the Cessation and it may well be necessary to give notice well before the official notification to the Society (see paragraph 1 above), but in any event not later than the official notification date to the Society. For example there may be files due for completion at about the date of Cessation or you may have a large number of 'live' files to wind-up. Failure to give sufficient notice to clients could amount to an act of negligence and could also lead to disciplinary action.

Click [here](#) for a sample letter to clients

(b) If you are planning to cease practice, you should be open and frank with your clients when obtaining instructions where it appears likely that the matter will continue beyond your planned date of Cessation. Extra care should be taken to ensure that you do not leave your client unrepresented.

5. Notice Generally

(a) You must provide fellow practitioners, barristers and others (including relevant Government Bureaux and Departments) involved in transactions with your firm, adequate notice to enable the files to be handed over in good time, or to conclude matters

with your firm, and to take such other steps as may be appropriate in the circumstances. The recommended period of notice should be at least 8 weeks prior to the date of Cessation.

Click [here](#) for a suggested list of organisations to be notified

- (b) Notification should also be given to the Commissioner of Inland Revenue pursuant to the provisions of the *Business Registration Ordinance* (Cap. 310).

6. Publication of Cessation

(a) Notice in the Law Society's Circulars

The Society will advise the membership of the firm's intention to cease practice in the weekly circulars once the Cessation Notice has been filed.

(b) Notice of Rescission

If the firm changes its decision on Cessation, a Notice of Rescission together with the payment of the fee, as prescribed by Council, must be filed before the expiration of the date of Cessation. A Notice of the Rescission will be circulated to the membership in the weekly circulars.

Click [here](#) for the Notice of Rescission

7. Money in Clients' Accounts

This section should be reviewed in conjunction with the guidance provided in paragraph 8 below.

The funds held in clients' accounts must be returned to the clients or dealt with as they direct. If a client cannot be traced it is suggested that you should advertise. At the date of Cessation all outstanding balances in the clients' accounts must be transferred to the firm appointed to act as the firm's Agent in accordance with the directions from Council (pursuant to the firm's application under Section 8(2) of the *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F)). The firm must notify the Society in writing within 7 days of the date of Cessation of the total aggregate amount in the firm's clients' accounts transferred to the Agent, such notification to be countersigned by the Agent by way of acknowledgement.

8. Delivery of Final Accountant's Report

(a) Date of Delivery of Final Accountant's Report

The Society will confirm the deadline for delivery of the Final Accountant's Report following receipt of the Cessation Notice.

(b) Legislation

The legislation dealing with the Final Accountant's Report can be found in:

(i) Section 8(2) of the *Legal Practitioners Ordinance* (Cap. 159)

This provides that the last date for delivery of the firm's Final Accountant's Report shall be within 6 months from the date on which the firm ceased business.

Click [here](#) for a copy of Section 8 of the *Legal Practitioners Ordinance* (Cap. 159)

(ii) *Accountant's Report Rules* (Cap. 159 sub. leg. A)

The Report must also comply with the requirements stated in Rule 8(2) which states:

'(2) The firm shall deliver the accountant's report to the Council not more than 6 months (or the period prescribed by rules made under section 73(1)(b) of the Ordinance) after the accounting period specified in the report.'

(c) 'Date of Cessation'

The firm's books should be made up as at the date of Cessation, namely when the firm ceased legal practice. Post Cessation events should be recorded in supplemental or reconciliation statements to the Society.

(d) Rule 12 *Accountant's Report Rules* (Cap. 159 sub. leg. A)

The Law Society's Council has the power to waive any of the provisions of the *Accountant's Report Rules* (Cap. 159 sub. leg. A) under Rule 12 in any particular case. Any application to the Council should be made before delivery of the Final Accountant's Report.

9. Office Accounts

A firm can maintain its Office Account after the date of Cessation in order to deal with post-Cessation settlement of bills and accounts receivable, etc. Any correspondence referring to the firm thereafter should make reference to the firm having ceased practice which is achieved by clear notification on the firm's stationery e.g. letterhead, compliments slips, receipts etc. (In addition see paragraph 17 below) (Revised March 2005)

10. Preservation of Books of Account

A firm which has ceased practice must also comply with the following requirements:

(a) *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F)

Rule 10(6)

'Every solicitor shall preserve for at least 6 years from the date of the last entry therein all books, accounts and records kept by him under this rule.'

Rule 10(6A)

'Subject to paragraph (8), the books and accounts, ledgers and records kept by a solicitor under this rule must be kept in Hong Kong.'

(b) *Inland Revenue Ordinance* (Cap. 112)

Consideration should also be given to provisions in the *Inland Revenue Ordinance* (Cap. 112) e.g. see section 22 on 'Assessment of Partnerships' and section 51C on 'Business records to be kept'.

11. Storage and Destruction of Old Files

(a) Members should review the Society's Guidance Note on The Storage and Destruction of Old Files in Circular 12-475.

Click [here](#) for a copy of Circular 12-475

(b) Full details on the location of the firm's old files must be given to the Society in the Cessation Notice.

(c) Consideration should also be given to the relevant provisions in the *Limitation Ordinance* (Cap. 347).

12. Final Notification of Changes to a Practice form

(a) Notification of Changes to a Practice form

The Society will send you the prescribed Notification of Changes to a Practice form following receipt of the Cessation Notice, which must be completed and filed with the Society within 14 days of the date of Cessation.

Click [here](#) for a copy of the Notification of Changes to a Practice form

(b) Final Employees' Return

A Final Employees' Return must be filed in the prescribed form pursuant to Rule 5(3) of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H)

(c) *Inland Revenue Ordinance* (Cap. 112)

Consideration should also be given to the provisions in the *Inland Revenue Ordinance* (Cap. 112).

13. Outstanding Professional Fees and Undertakings

The liability of a sole principal, and of partners for the liabilities of their co-partners, or former partners, for outstanding professional fees and undertakings is a continuing one and is not determined or superseded by Cessation.

Please review *The Hong Kong Solicitors' Guide to Professional Conduct*, in particular, the Commentary to Principle 12.04 and Chapter 14.

Click the link below for:

[Commentary to Principle 12.04](#)

[Chapter 14](#)

14. When a Solicitor retires: Is a Practising Certificate required?

(a) Description as a Solicitor

If you have retired from practice as a solicitor and do not hold a practising certificate you may still describe yourself as a solicitor, but care must be taken that you do not hold yourself out as qualified to practise as a solicitor. e.g. 'Solicitor (Non-practising)' is considered to be an appropriate description.

(b) Acting as a Consultant, or Working without remuneration

If a solicitor wishes to act as a consultant with a firm, or on a part-time or ad hoc basis, or if a retired solicitor wishes to work in the capacity of a solicitor without remuneration, for example for friends, relatives, family owned companies or registered charities, he must hold a practising certificate and must comply with all regulations which apply to solicitors.

15. The Retainer – 'Entire Contract Rule'

(a) A current retainer with the firm may be 'entire', i.e. one to complete the work for which the retainer was given and therefore one which cannot be terminated by the solicitor before completion unless there is good cause and reasonable notice.

- (b) It would be prudent to plan in advance and try and complete the retainers to which the entire contract rule applies before Cessation. If that is not possible, and the retainer will be terminated for good cause, the client should be given adequate notice of the Cessation. Appropriate steps should be taken to ensure the client is not left unrepresented.

16. Papers to be handed over on termination of retainer

All documents and materials belonging to a client e.g. title deeds, original wills, codicils, etc., should, subject to any lien, be returned to or disposed of according to the client's directions. (Please see paragraph 11 above)

17. Destruction of stationery and chops

Upon Cessation all stationery and chops with your firm's name should be destroyed, unless they are required for use in dealing with outstanding matters in relation to the firm's Office Account. If the firm's old stationery is to be used it must clearly indicate the firm has ceased practice, e.g. 'ABC & Co. ceased practice'.

(Revised March 2005)

18. Circular 12–81 is superseded.

PRINCIPLE 2.02 COMMENTARY 6

CIRCULAR 10-171

22 March 2010

LAW SOCIETY GUIDELINES

CESSATION OF PRACTICE BY FOREIGN FIRMS

The Guidelines will come into effect on 7 June 2010.

Cessation of Practice means the ceasing of practice as such by a foreign firm in Hong Kong.

'Cessation' occurs or may occur on:

- (a) the retirement of a sole practitioner; or
- (b) the closure of a practice; or
- (c) the retirement of a partner from a partnership; or
- (d) the amalgamation of 2 existing firms; or
- (e) where an existing firm is dissolved and the partners divide into two or more new firms.

1. Notification to the Society

If your firm intends to cease practice you should notify the Society at least 8 weeks prior to the date of Cessation by completing the Notice of Cessation of Practice form ('the Cessation Notice'). The Society must be notified of the firm which will act as your Agent (see paragraph 2 below).

Click [here](#) for a copy of the Cessation Notice

2. Appointment of Cessation Agent

The Agent can be a Hong Kong firm or a foreign firm in Hong Kong practising the law of the same jurisdiction of your firm. The Agent should be a firm of at least 2 partners resident in Hong Kong. The Agent should also be authorised to accept service of process on behalf of your firm. Firms which have been appointed as Agent should carefully review the Guidelines prepared by the Society on the duties and responsibilities of such appointment.

Click the link below for:

[Law Society Practice Direction Q](#)

[Guidelines on Appointment as an Agent](#)

3. Notice to the Insurer

Notice of Cessation of Practice must be given to your insurer.

4. Notice to Clients

(a) You must give sufficient notice to your clients with a view to avoiding any prejudice to your clients' interests and affording your clients adequate opportunity to take such steps as they consider appropriate in the circumstances. What will be sufficient notice will depend upon the particular circumstances of your firm and of the Cessation and it may well be necessary to give notice well before the official notification to the Society (see paragraph 1 above), but in any event not later than the official notification date to the Society. For example there may be files due for completion at about the date of Cessation or you may have a large number of 'live' files to wind-up. Failure to give sufficient notice to clients could amount to an act of negligence and could also lead to disciplinary action.

Click [here](#) for a sample letter to clients

(b) If you are planning to cease practice, you should be open and frank with your clients when obtaining instructions where it appears likely that the matter will continue beyond your planned date of Cessation. Extra care should be taken to ensure that you do not leave your client unrepresented.

5. Notice Generally

(a) You must provide fellow practitioners, barristers and others (including relevant Government Bureaux and Departments) involved in transactions with your firm, adequate notice to enable the files to be handed over in good time, or to conclude matters with your firm, and to take such other steps as may be appropriate in the circumstances. The recommended period of notice should be at least 8 weeks prior to the date of Cessation.

Click [here](#) for a suggested list of organisations to be notified

(b) Notification should also be given to the Commissioner of Inland Revenue pursuant to the provisions of the *Business Registration Ordinance* (Cap. 310).

6. Publication of Cessation

(a) Notice in the Law Society's Circulars

The Society will advise the membership of the firm's intention to cease practice in the weekly circulars once the Cessation Notice has been filed.

(b) Notice of Rescission

If the firm changes its decision on Cessation, a Notice of Rescission together with the payment of the fee, as prescribed by Council, must be filed before the expiration of the 8-week notification of the date of Cessation. A Notice of the Rescission will be circulated to the membership in the weekly circulars.

Click [here](#) for the Notice of Rescission

7. Money in Client Accounts

Solicitors' Accounts Rules (Cap. 159 sub. leg. F) are applicable to foreign firms.

This section should be reviewed in conjunction with the guidance provided in paragraph 8 below.

The funds held in client accounts must be returned to the clients or dealt with as they direct. If a client cannot be traced it is suggested that you should advertise. At the date of Cessation all outstanding balances in the client accounts must be transferred to the firm appointed to act as the firm's Agent in accordance with the directions from Council (pursuant to the firm's application under Section 8(2) of the *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F)). The firm must notify the Society in writing within 7 days of the date of Cessation of the total aggregate amount in the firm's client accounts transferred to the Agent, such notification to be countersigned by the Agent by way of acknowledgement.

8. Delivery of Final Accountant's Report

Accountant's Report Rules (Cap. 159 sub. leg. A) are applicable to foreign firms.

(a) Date of Delivery of Final Accountant's Report

The Society will confirm the deadline for delivery of the Final Accountant's Report following receipt of the Cessation Notice.

(b) Legislation

The legislation dealing with the Final Accountant's Report can be found in:

(i) Section 8(2) of the *Legal Practitioners Ordinance* (Cap. 159)

This provides that the last date for delivery of the firm's Final Accountant's Report shall be within 6 months from the date on which your firm ceased business.

Click [here](#) for a copy of Section 8 of the *Legal Practitioners Ordinance* (Cap. 159)

(ii) *Accountant's Report Rules* (Cap. 159 sub. leg. A)

The Report must also comply with the requirements stated in Rule 8(2) which states:

'(2) The firm shall deliver the accountant's report to the Council not more than 6 months (or the period prescribed by rules made under section 73(1)(b) of the Ordinance) after the accounting period specified in the report.'

The Council has the power to waive any of the provisions of the *Accountant's Report Rules* (Cap. 159 sub. leg. A) under Rule 12 in any particular case. Any application to the Council should be made before delivery of the Final Accountant's Report.

(c) 'Date of Cessation'

The firm's books should be made up as at the date of Cessation, namely when the firm ceased legal practice. Post-Cessation events should be recorded in supplemental or reconciliation statements to the Society.

9. Office Accounts

A firm can maintain its Office Account after the date of Cessation in order to deal with post-Cessation settlement of bills and accounts receivable, etc. Any correspondence referring to the firm thereafter should make reference to the firm having ceased practice which is achieved by clear notification on the firm's stationery e.g. letterhead, compliments slips, receipts etc. (In addition see paragraph 17 below)

10. Preservation of Books of Account

A firm which has ceased practice must also comply with the following requirements:

(a) *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F)

Rule 10(6)

'Every solicitor shall preserve for at least 6 years from the date of the last entry therein all books, accounts and records kept by him under this rule.'

Rule 10(6A)

'Subject to paragraph (8), the books and accounts, ledgers and records kept by a solicitor under this rule must be kept in Hong Kong.'

Rule 10(8)

'Notwithstanding paragraph (6A), the Council may specifically exempt a foreign lawyer from that paragraph upon such conditions as it thinks fit.'

(b) *Inland Revenue Ordinance* (Cap. 112)

Consideration should also be given to provisions in the *Inland Revenue Ordinance* (Cap. 112) e.g. see section 22 on 'Assessment of Partnerships' and section 51C on 'Business records to be kept'.

11. Storage and Destruction of Old Files

(a) Members should review the Society's Guidance Note on The Storage and Destruction of Old Files in Circular 02-384.

Click [here](#) for a copy of Circular 02-384

(b) Full details on the location of the firm's old files must be given to the Society in the Cessation Notice.

(c) Consideration should also be given to the relevant provisions in the *Limitation Ordinance* (Cap. 347).

12. Final Notification of Changes

(a) Final Notification of Changes

The Society will send you the Final Notification of Changes following receipt of the Cessation Notice, which must be completed and filed with the Society within 14 days of the date of Cessation pursuant to rule 9(2)(b) of the *Foreign Lawyers Practice Rules* (Cap. 159 sub. leg. R).

Click [here](#) for a copy of the Final Notification of Changes

(b) Final Declaration as to particulars relating to foreign firms

It must be filed pursuant to Practice Direction Q5 within 14 days of the date of Cessation.

Click [here](#) for a copy of the Final Declaration as to particulars relating to foreign firms.

(c) *Inland Revenue Ordinance* (Cap. 112)

Consideration should also be given to the provisions in the *Inland Revenue Ordinance* (Cap. 112).

13. Outstanding Professional Fees and Undertakings

The liability of a sole principal, and of partners for the liabilities of their co-partners, or former partners, for outstanding professional fees and undertakings is a continuing one and is not determined or superseded by Cessation.

14. Certificate of Registration as a foreign lawyer

Upon cessation of practice, the Certificate of Registration as a foreign lawyer will be deemed to have been suspended until notice has been received of a new employment in another law firm in Hong Kong and of the existence of an appropriate policy of insurance pursuant to rule 6 of the *Foreign Lawyers Registration Rules* (Cap. 159 sub. leg. S).

15. The Retainer – 'Entire Contract Rule'

- (a) A current retainer with the firm may be 'entire', i.e. one has to complete the work for which the retainer was given and therefore it cannot be terminated before completion unless there is good cause and reasonable notice.
- (b) It would be prudent to plan in advance and try and complete the retainers to which the entire contract rule applies before Cessation. If that is not possible, and the retainer will be terminated for good cause, the client should be given adequate notice of the Cessation. Appropriate steps should be taken to ensure the client is not left unrepresented.

16. Papers to be handed over on termination of retainer

All documents and materials belonging to a client e.g. title deeds, original wills, codicils, etc., should, subject to any lien, be returned to or disposed of according to the client's directions. (Please see paragraph 11 above)

17. Destruction of stationery and chops

Upon Cessation all stationery and chops relevant to the Hong Kong practice with your firm's name should be destroyed, unless they are required for use in dealing with outstanding matters in relation to the firm's Office Account.

PRINCIPLE 2.07 COMMENTARY 1

CIRCULAR 06-337

19 June 2006

THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT

FORMATION OF A SERVICE COMPANY

Commentary 1 to Principle 2.07 (Volume 1, 2nd edition)

1. This Circular is only applicable to the service companies as described in Commentary 1 to Principle 2.07 of *The Hong Kong Solicitors' Guide to Professional Conduct* (Volume 1) ('the Conduct Guide').
2. Commentary 1 to Principle 2.07 of the Conduct Guide states that:
'The formation of a service company to carry out necessary administrative functions concerned with the running of the practice, for example, the provision of staff, hiring premises, furniture and equipment and general maintenance, is permitted, provided the directors and shareholders of the company are partners of or solicitors employed in the firm.'
3. With effect from 13 February 2004, the *Companies Ordinance* (Cap. 32) was amended so that a private company may have one director (section 153A) and/or one shareholder (sections 4 and 95A).
4. Accordingly, a service company formed to carry out administrative functions by a sole practitioner who practises on his own account may have only one director and/or one shareholder. The sole practitioner will thus be able to fulfill the requirements in Commentary 1 to Principle 2.07 of the Conduct Guide.

5. Notwithstanding the removal by the amendment of the difficulties previously experienced by sole practitioners in complying with this Principle, the Council of the Law Society is of the view that the appointment of a second director is important so that there are at least two persons potentially available who can be held responsible for the service company, if necessary. The Council has therefore resolved that sole practitioners who practise on their own account and who wish to set up a service company may continue to:
 - (a) apply to the Law Society for a waiver of the proviso in Commentary 1 to Principle 2.07 of the Conduct Guide to enable them to appoint a reputable professional person as an additional director, an alternate director (section 153B of the *Companies Ordinance* (Cap. 32)) or to appoint a solicitor as a reserve director (see paragraph 7 below) of the service company; and
 - (b) such applications to be considered by the Consents Committee on a case-by-case basis.

6. In cases where a waiver of the proviso in Commentary 1 of Principle 2.07 has been granted prior to the date of this Circular to sole practitioners who practise on their own account, such waiver is still valid and it is a matter for the sole practitioners to decide whether to alter the directorship or shareholding structure of the service companies in the light of the amendment to the *Companies Ordinance* (Cap. 32).

7. According to section 153A(6) of the *Companies Ordinance* (Cap. 32), where a private company has only one member and that member is the sole director of the company, the company may in general meeting, notwithstanding anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of his death. As a sole practitioner who practises on his own account is required under rule 5AA of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) to make a testamentary provision which provides for the management of his practice after his death (pending disposal of that practice) to be carried out by a solicitor holding an unconditional practising certificate*, a sole practitioner shall appoint the same solicitor as a reserve director for his service company in accordance with section 153A(6) of the *Companies Ordinance* (Cap. 32).

*An 'unconditional practising certificate' is one that does not contain a condition preventing a solicitor from practising on his own account or in partnership.

8. The Council maintains the position that:
 - (a) service companies must be companies incorporated in Hong Kong in order that they be fully governed by the provisions of the *Companies Ordinance* (Cap. 32);
 - (b) service companies set up by sole practitioners who practise on their own account must have no more than two directors, one of whom must be the sole practitioner;
 - (c) the other director must be a reputable professional person and is not permitted to be a company; and
 - (d) the issued shares of the service company must be wholly owned beneficially by the sole practitioner.

9. Members please note that if the second director is not an employee of the sole practitioner's firm for the purposes of the definition of 'indemnified' in rule 2 of the *Solicitors (Professional Indemnity) Rules* (Cap. 159 sub. leg. M), he or she is not covered by the Professional Indemnity Scheme, and separate directors' and officers' liability insurance must be taken out for the second director.

10. This Circular is regarded as mandatory.

11. Circulars 97-349, 99-79, 00-155 and 05-311 are superseded.

12. Any enquiries can be directed to the Assistant Director of Regulation and Guidance.