

CHAPTER 8

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8.01 Duty of confidentiality

A solicitor has a legal and professional duty to his client to hold in strict confidence all information concerning the business and affairs of his client acquired in the course of the professional relationship, and must not divulge such information unless disclosure is expressly or impliedly authorized by the client or required by law or unless the client has expressly or impliedly waived the duty.

Commentary

1. The right of a client to confidential legal advice is enshrined in article 35 of the Basic Law (see Circular 04-320).
2. A solicitor cannot render effective professional service to a client unless there is full and unreserved communication between them. At the same time a client must feel completely secure and entitled to proceed on the basis, without any express request or stipulation on the client's part, that matters disclosed to or discussed with a solicitor will be held confidential.
3. This duty extends to the solicitor's staff, whether admitted or unadmitted, and it is the responsibility of the solicitor to ensure compliance.
4. A solicitor owes this duty of confidentiality to every client without exception. The duty survives the professional relationship and continues indefinitely after a solicitor has ceased to act for a client, whether or not differences have arisen between them.
5. Unauthorised disclosure of a client's confidences could lead to disciplinary proceedings against a solicitor and could also render a solicitor liable, in certain circumstances, to a civil action by the client arising out of the misuse of confidential information.
6. A solicitor must reveal matters where a court orders that such matters are to be disclosed. Where a warrant permits a police officer or other authority to seize confidential documents a solicitor should comply with the terms of the warrant. However if a solicitor is of the opinion that the documents are subject to legal professional privilege or that for some other reason the order or warrant ought not to have been made or issued, he should seek his client's instructions and subject thereto make an application to have the order or warrant set aside without unlawfully obstructing its execution.
7. A solicitor may be asked by the police to give information or to show them documents which the solicitor has obtained when acting for a client. Unless the client has waived confidentiality, the solicitor should insist upon receiving a search warrant, court order, witness summons or subpoena so that he may, where appropriate, claim privilege and leave the court to decide the issue.

8. A client has the right to refuse to disclose, even to a court, confidential communication with his lawyer made for the purpose of obtaining legal advice. This right to resist disclosure is a privilege granted to a client and so may be abandoned only by him. A solicitor is bound to assert this privilege on behalf of his client. A solicitor has no right unilaterally to waive a client's privilege; consent of the client or a court order must be obtained.
9. Communication made by a client to his solicitor before the commission of a crime or during the commission of a continuing crime for the purpose of being guided or helped in the commission of it is not confidential and not covered by legal professional privilege since such communication does not come within the scope of the professional retainer.
10. There are circumstances in which disclosure is required under various Ordinances, for example, the *Prevention of Bribery Ordinance* (Cap. 201), the *Inland Revenue Ordinance* (Cap. 112) and sections 8A, 8AA, 8B(2) and Part IIA of the *Legal Practitioners Ordinance* (Cap. 159). In relation to anti-money laundering provisions, see the *Drug Trafficking (Recovery of Proceeds) Ordinance* (Cap. 405); the *Organized and Serious Crimes Ordinance* (Cap. 455); the *United Nations (Anti-Terrorism Measures) Ordinance* (Cap. 575); The Law Society Practice Direction P and Law Society Circulars 08-59, 08-361, 08-362, 08-756 and 09-360.
11. When disclosure is required by law or by order of a court of competent jurisdiction a solicitor should always be careful not to divulge more information than is required. It should be noted that the anti-money laundering provisions referred to above specifically exclude from the duty of disclosure information subject to legal professional privilege i.e. legal advice and related documents prepared or given in contemplation of or in connection with legal proceedings. However, such provisions do not exclude the duty to disclose information that is merely confidential and no statutory defence is available to a solicitor for failing to provide information required to be disclosed under such provisions other than that protected by legal professional privilege.

Privileged information should not be revealed unless the law or a court order clearly overrides legal professional privilege and not merely the duty of confidentiality.

For a summary of the distinction between confidentiality and legal professional privilege see *PCCW-HKT Telephone Ltd v Aitken* [2009] 2 HKLRD 274, CFA; *Pang Yiu Hung Robert v Commissioner of Police* [2002] 4HKC 579.

As to limited waiver by the client see *Citic Pacific Ltd. v. Secretary for Justice & Another* [2012] HKCU 685.

12. The duty to keep confidential a client's affairs continues after the client dies and the right to permit disclosure or withhold it passes to the personal representatives of the client.
13. The contents of a will prepared by a solicitor should not be disclosed before probate is granted, except to or with the consent of the executors.
14. The Law Society is of the view that after the death of the testator it is not a breach of this duty for a solicitor who holds a will or a copy to disclose that fact and the date of execution of the will in response to an enquiry made through the Law Society. However, the solicitor must then seek instructions from the executors named in the will before disclosing the contents of the will and the identity of the named executors to any person. (See Circular 12-438.)
15. Confidential information may be divulged with the express authority of the client concerned and, in some situations, the authority of the client to divulge may be implied. For example, some disclosure may be necessary in a pleading or other document delivered in litigation being conducted for the client. Again, a solicitor may (unless his client directs otherwise) disclose the client's affairs to partners and associates in the firm and, to the extent necessary, to non-legal staff such as secretaries and filing clerks. This implied authority to disclose places the firm under a duty to impress upon its own lawyers and staff and those of any firm with which it may be associated the importance of non-disclosure (both during their employment and afterwards).
16. A solicitor may in exceptional circumstances breach his duty of confidentiality to the extent of revealing information that he believes necessary to prevent a client or any other person from committing or continuing a criminal act that the solicitor believes on reasonable grounds does involve or is likely to result in the abduction of or serious violence to a person (including child abuse). Even then the solicitor must exercise his professional judgment and decide whether there are any other means of preventing the crime and, if not, whether the public interest in protecting persons at risk from serious harm outweighs his duty to his client.
17.
 - (a) Disclosure of confidential information may also be justified in order to recover costs from a client, or in defence of any allegation of malpractice or misconduct, but only to the extent reasonably necessary for such purpose.
 - (b) A solicitor may reveal information which would otherwise be confidential to the extent that it is reasonably necessary to establish a defence to a criminal charge or civil claim (including an investigation as to entitlement to indemnity under the Professional Indemnity Scheme) against him or his firm or

where the solicitor's conduct is under investigation by the Law Society or the Solicitors Disciplinary Tribunal.

18. Firms which are in an association either under section 39C of the *Legal Practitioners Ordinance* (Cap. 159) or under rule 1A of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and share premises, facilities, management and employees must inform their clients that the firms will be treated as one firm for the purposes of any rules of conduct relating to conflict of interest and confidentiality. Firms which are not prepared to treat themselves as one firm must not share premises, facilities, management and employees. See Circular 07-767.
19. Problems with confidentiality can arise where a solicitor or firm shares office services provided by independent contractors (such as computers, equipment or typing services) with another person or business. A solicitor should only make use of these where strict confidentiality of client matters can be maintained: see Practice Direction D.5.
20. The Law Society has forbidden employment by a solicitor of any unqualified person who is in the regular employment of another solicitor unless approval has been given by the Council: see rule 4B of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H).
21. As a general rule, a solicitor should not disclose that he has been consulted or retained by a person in relation to a particular matter. However, certain communication from a client is not confidential if it is a matter of public record, for example, a solicitor has been instructed by a named client in a contentious matter, but the type of business involved may be subject to the duty of confidentiality.
22. A solicitor should avoid indiscreet conversations or communication, even with his spouse or family, about a client's affairs and should shun any gossip about such things even though a client is not named or otherwise identified. Likewise a solicitor should not repeat any gossip or information about a client's business or affairs that may be overheard by or recounted to the solicitor. Apart from professional considerations, indiscreet conversations or communication could result in prejudice to a client.
23. Although some facts concerning a client's affairs may be public knowledge, nevertheless, a solicitor should not participate in or comment upon speculation about a client's affairs.
24. A solicitor must explain to his clients that any information in respect of the retainer is to be fully disclosed to every client who is a party to that retainer. Where a solicitor has received information from joint clients, consent from all is required before the duty to preserve confidentiality can be waived (see also Principle 9.04 Commentary 1).

25. If a solicitor acts for two or more clients jointly, information communicated to the solicitor in his capacity as solicitor acting for only one of the clients in a separate matter must not be disclosed to the other clients without the consent of that one client.
26. When conducting multiple client interviews in project conveyancing, the safeguards for the protection of client confidentiality must be ensured (see Circular 02-25).
27. Where two or more firms amalgamate, the confidential information which each firm has obtained when acting for its own clients is presumed to pass to the new amalgamated firm. As to potential conflicts between clients in the new firm, see Principle 9.04 Commentary 6.
28. A solicitor who moves to a new firm must not pass on information about a previous client's affairs to a client in the new firm without the consent of the previous client. See also Principles 8.03 and 9.02.
29. A solicitor must not disclose a client's address without the client's consent. Where a solicitor is asked for a client's address, he may, as a matter of courtesy, offer to send on to his client, at his last known address, a letter from the enquirer addressed to the client, care of the solicitor.
30. Where a solicitor sends postcards to acknowledge receipt of communications sent to him, care must be taken to ensure that no confidential information of any kind appears on them. The use of open postcards should be discouraged since it is preferable to use cards which can be folded and sealed, or secured in some other way.
31. This Principle extends to cover electronic communication (see also Principle 1.07).
32. Solicitors should take all appropriate supervisory steps to ensure that no breach of confidentiality occurs during the destruction of clients' files. (See Circulars 12-475 and 08-361).
33. A solicitor should not sell his book debts to a factoring agent because of the sensitive nature of a solicitor's bill and the danger of breaches of confidence which may occur. Such factoring may also lead to a breach of rule 4 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H): see Principle 4.16.
34. Where disclosure has taken place a solicitor should inform his client promptly that he has done so.
35. In accordance with Practice Direction D.7 (6) physical files must be stored in Hong Kong.

8.02 Profit on information

A solicitor must not make any personal profit by the use of confidential information concerning the business and affairs of his client acquired in the course of the professional relationship.

Commentary

1. The fiduciary relationship between a solicitor and client forbids a solicitor to use any such confidential information for the benefit of the solicitor or a third person, or to the disadvantage of his client. A solicitor who engages in literary works, such as an autobiography, memoirs and the like, should avoid disclosure of confidential information.
2. Breach of the fiduciary duty may result in liability at law to account to the client as well as disciplinary action.
3. For more on a solicitor's fiduciary duties, see Chapter 7.

8.03 Duty to pass information to a client

A solicitor is under a duty to pass on to his client and use all information which is material to the subject matter of the retainer regardless of the source of that information. There are, however, exceptional circumstances where such duty does not apply. In addition the duty is in some instances overridden by statute.

Commentary

1. A breach of this rule may well be actionable in law in certain circumstances and may involve a solicitor in disciplinary action.
2. A solicitor should take care to avoid disclosure to one client of confidential information concerning or received from another client and should decline instructions where there is a reasonable likelihood that such disclosure would be required.
3. A solicitor should not seek to pass on to the solicitor on the other side confidential information which he does not wish to be disclosed to the other solicitor's client. Equally, the other solicitor should decline to accept or receive confidential information on the basis that it will not be disclosed. For example if a letter disclosing confidential information is written to the solicitor on the other side the writer cannot complain if the letter is shown to the other solicitor's client.
4. There may be certain circumstances where the disclosure of information received by a solicitor could be harmful to his client because it may affect his mental or physical condition. Consequently, it

will be necessary for a solicitor to decide whether in the interests of his client he should disclose such information, for example a medical report disclosing a terminal illness.

5. A solicitor should not seek to obtain access to or information from private correspondence or documents belonging to or intended for the other side. This includes not opening or reading letters addressed to someone other than himself or the firm.
6. Where it is obvious to a solicitor that documents have been mistakenly disclosed to him on discovery or otherwise he must immediately cease to read the documents, inform the other side and return the documents without making copies. The solicitor should inform his client. He should advise the client that the court is likely to grant an injunction to prevent the overt use of any information gleaned from the documents. Both the client and the solicitor may find costs awarded against them in respect of such an injunction. (See *English and American Insurance Company Ltd v Herbert Smith*, [1988] FSR 232; [1987] NLJLR 148 and *Ablitt v Mills & Reeve (a firm)* [1995] TLR 635, *Guinness Peat Properties Ltd v Fitzroy Robinson Partnership* [1987] 2 All ER 716 and *Pizzey v Ford Motor Co Ltd* [1993] The Times March 8 (CA).
7. The duty may be overridden by anti-money laundering provisions (see also Principle 8.01 Commentary 10).

8.04 Confidentiality of mediation

A solicitor acting as a mediator shall not without the express consent of one party disclose to the other party or any other person any confidential information acquired by that solicitor during the course of mediation.

APPENDICES

PRINCIPLE 8.01 COMMENTARY 1

CIRCULAR 04-320

26 July 2004

CRIMINAL

Criminal Litigation – Guidelines on Steps to Take to Protect Clients’ Confidentiality in interviews

1. The Society’s Criminal Law and Procedure Committee recently noted the existence of circumstances in which clients are denied the right to obtain private and confidential advice from their legal representatives in criminal cases.

The Client’s Right to Confidential Advice

2. Members are reminded that it is fundamental to the criminal justice system that ‘the client’ has the right to request and receive legal advice, secure in the knowledge that neither the client nor his/her lawyer can be forced to reveal the content of the communication against the wishes of the client. Such common law right of the client is now enshrined in Article 35 of the Basic Law.
3. Members, and those in their employment, have a duty to protect their client’s confidences [see Principle 8.01 of *The Hong Kong Solicitors’ Guide to Professional Conduct*, Vol. 1]. If they fail in such duty, they could be the subject of disciplinary proceedings.

Guidelines on Steps to take to protect Clients’ Confidentiality

4. Members must therefore take all steps necessary to protect their clients’ confidentiality consistent with their professional duties. These include but not limited to the following:
 - Before conducting interviews with clients in custody, whether at the offices of law enforcement agencies, in Correctional Services institutions or at courts, members must ensure that there is no one within hearing distance. Members should appreciate that evidence of privileged conversations can be given by persons who overhear them unless the court can be persuaded for good reason to exclude that evidence.
 - Law enforcement officers and CSD officers must be told that interviews will not be conducted in their presence and/or hearing distance. If they persist on being present, for whatever reason, the

solicitor should decline to interview the client; make a record of the reason why the interview is not to proceed; explain the reasons for this to the client and ask the client to sign the record. If the interview were to take place in a police station, a complaint should be made to the Duty Officer who should be asked to record the complaint. Similarly, complaints should be made to the appropriate person where the interview were to take place if the interview is other than in a police station.

- Where the law enforcement officers or the CSD officers claim that their presence is necessary to protect the solicitor from a violent client, the solicitor may need to sign a waiver releasing the authority from any liability in the event of an attack.
 - Where the suggestion is that the client will try to escape, there is still an obligation upon the solicitor to ensure that the interview proceeds in a situation of confidentiality. The solicitor should insist upon a secure room which avoids the need for the presence of officers.
5. The Society would like to emphasise that any interviews of clients must not proceed except in situations of confidentiality. Where an interview cannot proceed because confidentiality may be compromised, apart from the complaints mentioned in 4 above, reference identifying the matters complained of should be made to the Secretary for Justice; and if the client is in custody, to the court in which the case is proceeding. Such complaints may be relevant to costs and/or to arguments about the exclusion of evidence or stopping the case in future proceedings.
6. Whilst members must be forceful in protecting the rights of the client, they must also act politely and professionally at all times. Anything that is said to the officers concerned when seeking to protect the client's rights may eventually come into evidence at a trial. Intemperate, ill thought out comments and threats may well prove embarrassing and will generally be counter productive.

Identification Parade

7. The lack of opportunity for a confidential interview may be a particular problem where the law enforcement agency wants to hold an identification parade. In those circumstances, the client should be told, in the presence of the officers:
- that he/she need not attend an identification parade unless he/she consents to do so;
 - that if he/she does not consent to attend an identification parade, the law enforcement agency may try other methods of identification such as a confrontation or group identification.

8. If, having received the advice in (7), the client consents to attend an identification parade, the solicitor should record that the client has been advised that he/she need not attend an identification parade, that the advice is understood but nonetheless he/she has decided to attend the identification parade and ask the client to sign that record.

Unless the client has dispensed with the services of the solicitor, the solicitor should remain in attendance at the Parade, be alert to any irregularities that might occur and respond to such irregularities in the way that best protects the client's interests.

9. Where the client does not wish to attend an identification parade without a prior confidential interview, the solicitor should:
 - record the client's wishes and ask him/her to sign that record;
 - request the officer in charge of the parade to postpone the identification parade until there has been an opportunity for a confidential interview with the client;
 - ask for that request to be recorded in the Parade Book;
 - make a record of the request and of the response by the Officer in Charge of the Parade.
10. Where the client does not wish to attend an identification parade without a prior confidential interview and the Officer in Charge of the Parade refuses to agree a postponement of the Parade and states that other methods of identification will be tried, the solicitor should:
 - advise the client not to attend the identification parade;
 - inform the Officer in Charge of the Parade that the client does not agree to attend the Parade because of the denial of opportunity for a confidential interview and ask for that to be recorded in the Parade Book;
 - inform the Officer in Charge of the Parade that objection may be taken at the trial of the client to the admissibility of identification evidence because of the denial of the right to a confidential interview and ask for that to be recorded in the Parade Book;
 - make a record of the requests made to the Officer in Charge of the Parade and the response to those requests and ask the Officer to sign that record;
 - make a complaint to the Secretary for Justice and/or the court before which the case is proceeding.

PRINCIPLE 8.01 COMMENTARY 10

CIRCULAR 08-59

5 February 2008

ANTI-MONEY LAUNDERING

1. Practice Direction P incorporating a set of guidelines on anti-money laundering and terrorist financing was issued on 3 December 2007. Please click [here](#) for a copy of Practice Direction P.
2. The Practice Direction consists of, inter alia:-
 - (a) a table of mandatory requirements for law firms on client identification and verification, client due diligence exercises, record keeping;
 - (b) a summary of the current relevant legislation on money laundering and terrorist financing;
 - (c) basic policies and procedures required of law firms;
 - (d) relevant legal issues on legal professional privilege, client confidentiality, litigation, civil liability and confidentiality agreements;
 - (e) examples of suspicious transaction indicators and risk areas; and
 - (f) suspicious transaction reporting.
3. Every file opened for each client must record the steps taken by the firm for client identification and client due diligence and those records must be retained. The Law Society has recommended the preservation of files for a specified period. In order to minimize the administration of closed files, the period for which the records are to be retained is to be the same as that for closed files namely:-
 - (a) conveyancing matters – 15 years
 - (b) tenancy matters – 7 years
 - (c) other matters, except criminal cases – 7 years; and
 - (d) criminal cases – 3 years from expiration of any appeal period.
4. The full content of Practice Direction P takes advisory effect from the date of issue on 3 December 2007. It was initially intended that Table A and paragraphs 18 – 28 of the Practice Direction would take mandatory effect from 1 March 2008. To allow members more time to make the necessary adjustments to ensure compliance with the mandatory provisions, the Council resolved to postpone the effective date from 1 March 2008 to 1 July 2008.

5. With effect from 1 July 2008, any law firm, solicitor or foreign lawyer practising in Hong Kong who fails to comply with the mandatory provisions may face disciplinary proceedings (see Chapter 16 of *The Hong Kong Solicitors' Guide to Professional Conduct*). In addition, firms which do not comply with the provisions in Practice Direction P will be exposed to additional risk of being involved in money laundering and terrorist financing activities, with severe consequences of criminal prosecution and significant loss of reputation.

6. Circular 07-726 is superceded.

PRINCIPLE 8.01 COMMENTARIES 10 & 32

CIRCULAR 08-361

30 June 2008

PRACTICE DIRECTION P

1. On 24 June 2008, the Council resolved to revise paragraphs 24 and 86 of Practice Direction P in the manner as underlined below:-

'24. All files, including all documents relating to the transactions and records obtained or compiled for client identification and due diligence, should be retained in order to facilitate the retrieval of information relating to client identification and due diligence. The recommendations contained in the existing Circular 02-384 should be observed. The retention period for the following types of transactions is as follows:-

- 24.1 conveyancing matters – 15 years;
- 24.2 tenancy matters – 7 years;
- 24.3 other matters, except criminal cases – 7 years; and
- 24.4 criminal cases – 3 years from expiration of any appeal period.

The above retention periods also apply to copies of the individual client's identification documents including the Hong Kong identity cards and passports collected in relation to the files or transactions.'

'86. Original documents (e.g. identity card or passport of an individual, certificate of incorporation or registration of a company or other legal entity) should be inspected whenever possible for verification purpose. Where originals are not available, copies of such documents from a reliable independent source (e.g. copies certified by appropriately regulated professional) should be obtained. Law firms, solicitors and foreign lawyers are required to take or collect copies of individual client's identification documents. Copies of the individual client's identification documents include Hong Kong identity cards and passports. Copies of all such documents must be kept as a record. It is also advisable to note down when the original document(s) was/were inspected and when the copy(ies) was/were taken.'

2. The Practice Direction P as revised will take effect on 1 July 2008.
3. Replacement pages of the relevant paragraphs of Practice Direction P for insertion in *The Hong Kong Solicitors' Guide to Professional Conduct* Volume 2 are attached to Circular 08-363.

PRINCIPLE 8.01 COMMENTARY 10

CIRCULAR 08-362

30 June 2008

**ENDORSEMENT BY THE
PRIVACY COMMISSIONER FOR PERSONAL DATA
ON PARAGRAPH 86 OF PRACTICE DIRECTION P
(AS REVISED BY THE COUNCIL ON 24 JUNE 2008)**

1. Pursuant to paragraph 3.2.2.2 of the Code of Practice on the Identity Card Number and other Personal Identifiers ('the Code'), the Privacy Commissioner for Personal Data has endorsed the requirement set out in paragraph 86 of Practice Direction P (Guidelines on Anti-Money Laundering and Terrorist Financing) (as revised by the Council on 24 June 2008) to members of the Law Society to the extent that they are required to collect their clients' copies of identity cards as being in accordance with Data Protection Principle 1 of the *Personal Data (Privacy) Ordinance* (Cap. 486).
2. Law firms, solicitors and foreign lawyers are permitted under paragraph 3.2.2.2 of the Code to collect copies of the identity cards of their clients in compliance with the requirement contained in paragraph 86 of Practice Direction P which requirement has been endorsed in writing by the Privacy Commissioner.

PRINCIPLE 8.01 COMMENTARY 10

CIRCULAR 08-756

1 December 2008

CLARIFICATIONS OF PRACTICE DIRECTION P

1. Client identification and verification are two distinct concepts. Identification refers to the basic information a solicitor is required to obtain and record about his clients to know who they are whenever he is retained: their names, addresses, telephone numbers, occupation, etc. Verification refers to the information a solicitor needs to obtain to confirm that his clients are who or what they say they are.

2. Client verification is only required when a solicitor is acting for a client (new or existing) or giving instructions on behalf of such client in any of the circumstances as set out in paragraph 20 of Practice Direction P, namely:-
 - (i) Financial transactions (e.g. buying and selling of real estate, business, company, securities and other assets and property);
 - (ii) Managing client money*, securities or other assets;

*Simply operating a solicitor's client account would not generally be regarded as 'managing client money'. However, where a solicitor acts as an attorney of a client, it may be considered as 'managing client money'.
 - (iii) Management of bank or securities accounts;
 - (iv) The formation, structure, re-organisation, operation or management of companies and other entities;
 - (v) Insolvency cases and tax advice;
 - (vi) Other transactions involving custody of funds as stakeholder or escrow agent or transfer of funds through their bank accounts.

Transaction-based client due diligence in accordance with paragraphs 102–107 of Practice Direction P must also be undertaken in those circumstances.

3. Recommended procedures and policies on client identification and verification are set out in paragraphs 85-97 of Practice Direction P.

4. The Privacy Commissioner in his letter to the Law Society of 14 August 2008, at Annex A, clarified the scope of endorsement given by him on 26 June 2008 pursuant to Clause 3.2.2.2 of the Code of Practice on the Identity Card Number and other Personal Identifiers.

5. Practice Direction P embodies a risk based approach in complying with the requirements of client identification, verification and due diligence. Law firms are given latitude to establish their own internal guidelines which are best suited for individual firms' needs.

PRINCIPLE 8.01 COMMENTARY 10

CIRCULAR 09-360

18 May 2009

ANTI-MONEY LAUNDERING

1. Reference is made to Circular 08-328. Paragraph 2 of Circular 08-328 provides that an exemption shall be made from compliance with Practice Direction P in the case of files opened prior to 1 July 2008 provided that compliance is undertaken on or before 30 June 2009.
2. The Council has decided that the compliance with Practice Direction P in the case of files opened prior to 1 July 2008 be suspended until further notice.
3. By way of clarification, it will be necessary to undertake client identification, verification and client due diligence measures for all new files opened on or after 1 July 2008 including new files for existing clients in accordance with the provisions under Practice Direction P.
4. This circular supersedes Circular 08-328.

PRINCIPLE 8.01 COMMENTARY 14

CIRCULAR 12-438

11 June 2012

PROBATE Will Searches

1. Members should take note that the Society will only entertain will search applications that involve enquiries properly made by interested parties. The prescribed application form requires an Applicant firm to specify the capacity in which the firm is acting. Where the firm is not acting for the usual categories of interested parties specified in the form, namely 'executor(s), administrator(s), beneficiary(ies), creditor(s) or debtor(s)' of a deceased estate, the firm should clearly specify the interests of their clients in the form.

Please click [here](#) for the application form.

2. Members are reminded of the following:-
 - The form must be signed by the solicitor making the enquiry for the client on behalf of the firm.
 - A copy of the Death Certificate issued by the proper Government authority must be submitted with the form.
 - Any foreign death certificate issued by the proper Government authority must be certified by the solicitor as a true copy of the original.
 - Where document(s) other than a death certificate issued by the proper Government authority is/are produced in support of the application, the application must be accompanied by a written confirmation by the firm that 'to the best of their knowledge, information and belief, the person named as the deceased person in the application form has passed away' before the Society will 'consider' the application. The Society retains the discretion to reject the application if it is not satisfied that the death of the person named as the deceased in the application form has been established.
 - The identity of the enquiring firm will be disclosed in the weekly will search notice and the prior consent of the client should be obtained for such disclosure.
 - It should be for firms acting for different clients with an interest in the same estate to liaise directly with each other regarding their clients' affairs and any response on will search enquiry should be directed to the enquiring firm instead of through the Society's secretariat. Firms holding the original or a copy of the will, codicil or other

testamentary disposition made by the deceased person named in the weekly will search notice are requested to contact the enquiring firm direct within 14 working days (updated on 11 June 2012). Members are reminded to exercise due care when responding to enquiries in order to avoid any breach of the duty of confidentiality which they owe to the testator or the testator's personal representatives.

- Subject to the Society's approval of the application, the will search notice will only be published on the Monday following receipt by the Society of all relevant documents and the requisite application fee of HK\$1,800 by Wednesday.

3. Circular 12-230 is superseded.

PRINCIPLE 8.01 COMMENTARY 18

CIRCULAR 07-767

17 December 2007

ASSOCIATION WITH LOCAL FIRMS, FOREIGN FIRMS AND OVERSEAS FIRMS

1. Concerns with confidentiality and conflict of interest can arise where a close working relationship develops between two firms of solicitors through the sharing of premises, personnel and facilities.
2. The *Legal Practitioners Ordinance* (Cap. 159), its subsidiary legislation and the Society's Practice Directions contain provisions specifying the permissible types of working relationships which involve sharing between firms in different forms and the measures that have to be taken by the firms to address the concerns on confidentiality and conflict of interest.

Between Hong Kong firms

3. It is common for two or more Hong Kong firms to have one or more common solicitors. This situation is referred to as 'association' in the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) (rule 1A of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H)).
4. To ensure that the public is made aware of the existence of an association relationship, the firms involved must make reference to it on their respective letterheads in the manner as stipulated in rule 2B(2)(c) of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H).
5. Further, to minimise the risk of any possible conflict of interest, subject to certain exceptions, two or more solicitors practising in association must not act for both the vendor and the purchaser in a sale or other disposition of land for value (rule 5C of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H)).
6. Where at least one of the solicitors in common is an equity partner common to each of the firms in association, the firms will be permitted to share premises, personnel and facilities (Practice Direction D 5(3)(iii)). However, the firms should only do so where:
 - (a) they are prepared to treat themselves as one firm for the purpose of any rules of conduct relating to confidentiality and conflict of interest; and
 - (b) they will inform their respective clients accordingly.

Between a Hong Kong firm and a registered foreign firm

7. A close working relationship may also develop between a Hong Kong firm and a registered foreign firm. Sharing of fees, profits, premises, management, employees and facilities between a Hong Kong firm and a registered foreign firm is permissible provided that they demonstrate a commitment to the working relationship by
 - (a) entering into an Association with each other;
 - (b) registering the Association with the Society; and
 - (c) entering into an agreement under which fees, profits, premises, management or employees are shared between the two firms within 2 months after registration of the Association (section 39C of the *Legal Practitioners Ordinance* (Cap. 159)).
8. To ensure that the public is made aware of the existence of an Association relationship, the firms involved must make reference to it on their respective letterheads in the manner as stipulated in rule 2B(2)(c) of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and rule 5(2) of the *Foreign Lawyers Practice Rules* (Cap. 159 sub. leg. R).
9. Where the firms in an Association wish to share premises, management or employees, they should only do so where:
 - (a) they are prepared to treat themselves as one firm for the purpose of any rules of conduct relating to confidentiality and conflict of interest; and
 - (b) they will inform their respective clients accordingly.

Between a Hong Kong firm and an overseas firm with no place of business in Hong Kong

10. A Hong Kong firm may also develop a close working relationship with an overseas firm which has no place of business in Hong Kong whereby there is:
 - (a) mutual referral of clients;
 - (b) secondment of staff between the firms; or
 - (c) exchange of know how or information.
11. Provided that such a working relationship is an ongoing contractual relationship between the firms that has been in existence for or is likely to remain in existence for at least two years, the Hong Kong firm may make reference to such kind of association on its letterhead in the manner as stipulated in rule 2B(3)(h) of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H).
12. This Circular is regarded as mandatory.

Circular 03-169 is superseded.

Any enquiries can be directed at the Assistant Director, Regulation and Guidance on 2846-0503.

PRINCIPLE 8.01 COMMENTARY 26

CIRCULAR 02-25

28 January 2002

PROPERTY

**Breaches of Confidentiality in Multiple-Client Interviews
in Project Conveyancing**

1. The Council is aware of the practice of multiple-client interviews in project conveyancing and takes the view that such practice per se amounts to a breach of the solicitor's duty of confidentiality.
2. Members should carefully review their duty under Principle 8.01 of *The Hong Kong Solicitors' Guide to Professional Conduct* Vol. 1 and should institute appropriate safeguards to prevent breaches of the duty.
3. These safeguards could include:
 - invitations, at the outset of the multiple-client interviews, for those who wish to discuss matters confidentially to be given the opportunity to have the interview conducted separately in another room.
 - provide a general explanation in the multiple-client interview to all present and then offer to provide personal details in private to those wishing to avail themselves of the offer.

Appropriate and sufficient safeguards in any given situation may vary and members should exercise their own professional judgment according to the particular circumstances of each individual case.

PRINCIPLE 8.01 COMMENTARY 32

**CIRCULAR 12-475 'STORAGE AND DESTRUCTION OF
OLD FILES' SEE CHAPTER 5**