

PART II
SOLICITORS

3. Power of Court to admit solicitors

- (1) (Repealed)
- (1A) (Repealed)
- (1AA) (Repealed)
- (1AB) (Repealed)
- (1AC) (Repealed)
- (1AD) (Repealed)
- (1AE) (Repealed)
- (1AF) (Repealed)
- (1B) (Repealed)
- (2) Every solicitor shall be an officer of the Court and shall be subject to the jurisdiction thereof in accordance with the provisions of the High Court Ordinance (Cap. 4) and of this Ordinance.
- (3) Subject to the provisions of this Ordinance, the Court or any judge thereof may, in so far as it is not inconsistent with the Basic Law, exercise the same jurisdiction in respect of any person admitted to practise as a solicitor in the Court as was exercisable immediately before 1 July 1997 by the then High Court or any judge thereof, as the case may be, in respect of any person admitted to practise as a solicitor in the then High Court.

4. Qualifications for admission

- (1) The Court may, in such manner as may be prescribed by the Chief Justice, admit as a solicitor of the High Court a person who the Court considers is a fit and proper person to be a solicitor and who -
 - (a) has complied with requirements prescribed by the Council with respect to employment as a trainee solicitor, the passing of examinations and the completion of courses; or
 - (b) in the case of a person who seeks admission on the basis of qualifications acquired outside Hong Kong, qualifies for admission under requirements prescribed by the Council.
- (1A) The Court shall not admit a person under this section unless it has received from the Society a certificate to the effect that the Society is satisfied that the person -
 - (a) has resided in Hong Kong for at least 3 months immediately before his admission;
 - (b) intends to reside in Hong Kong for at least 3 months immediately after his admission;
 - (c) has been ordinarily resident in Hong Kong for at least 7 years; or
 - (d) has been present in Hong Kong for at least 180 days of each of at least 7 years.
- (1B) The Court may, when admitting a person as a solicitor, sit in chambers.

- (2) A person shall not be disqualified from admission as a solicitor by reason only that-
 - (a) a solicitor who employed him or acted as his principal for the whole term or such part of a term of a trainee solicitor contract as may be prescribed by the Council has neglected or omitted to take out a practising certificate; or
 - (b) the name of the solicitor who employed him as a trainee solicitor or acted as his principal for any period has after the termination of that period been removed from or struck off the roll of solicitors.
- (3) Where a person who was admitted as a solicitor on the basis of an intention referred to in subsection (1A)(b) fails to reside in Hong Kong for at least 3 months immediately after his admission, the Court may, on the application of the Society, order that the person's name be removed from or struck off the roll of solicitors.

5. Roll of solicitors

- (1) The Registrar shall keep a roll of all solicitors admitted by the Court under section 4 and shall have the custody of the roll of solicitors and of all documents relating thereto and shall allow any person to inspect the roll during office hours without payment.
- (2) The Registrar, upon production of a certificate of admission signed by a judge and upon payment to the Registrar and to the Society of such fees as may be prescribed by the Chief Justice, shall enter on the roll of solicitors the name of the person admitted.
- (3) The Chief Judge may, if he thinks fit, at any time order the Registrar to replace on the roll of solicitors the name of a solicitor whose name has been removed or struck off the roll of solicitors.

6. Practising certificates - solicitors

- (1) The Society, on application in writing by a solicitor in the month of November in any year in a form approved by the Council and on payment of such fee as may be so prescribed, shall, subject to subsection (3), issue to the applicant a practising certificate as a solicitor for the period of one calendar year from 1 January next following the date of the application.
- (1A) A practising certificate issued to a solicitor admitted under section 3(1AD) before the repeal of that provision by the Legal Practitioners (Amendment) Ordinance 1994 (60 of 1994) is subject to the condition that the solicitor shall not practise on his own account or in partnership.
- (2) A practising certificate issued under subsection (1) shall be in such form as may be prescribed by the Council.
- (3) A practising certificate shall not be issued under subsection (1) unless the applicant has, where necessary, delivered to the Council an accountant's report under section 8, complied with any indemnity rules made by the Council under section 73A or is exempt from them and has paid to the Society the membership subscription in respect of the year for which the practising certificate is to be issued.
- (4) Notwithstanding subsection (1), the Society may, upon such conditions as it thinks fit, permit an application for a practising certificate to be made under this subsection at any time and upon such application may issue to the applicant a practising certificate for any period not exceeding one calendar year and ending on 31 December in the year in which it is issued.
- (5) Notwithstanding subsection (1), the Society may-
 - (a) refuse to issue a practising certificate on such grounds as may be prescribed by the Council;
 - (b) issue a practising certificate to an applicant subject to such conditions as may be prescribed by the Council;

- (c) issue a practising certificate to an applicant subject to the condition that he shall comply with any continuing legal education rules made under section 73;
 - (d) refuse to issue a practising certificate if the applicant has not complied with any continuing legal education rules made under section 73; or
 - (e) amend an already issued certificate by adding such conditions as may be prescribed by the Council.
- (5A) Where the Society considers that a solicitor has not complied with conditions imposed under subsection (5) or (6) it may, after affording the solicitor the opportunity to make representations, suspend or cancel the solicitor's practising certificate with or without refunding the certificate fee.
- (6) It shall be a condition of a practising certificate issued for the first time on or after 1 August 1976 to any solicitor who does not satisfy the Council that since being admitted as a solicitor he has been bona fide employed in the practice of a solicitor in Hong Kong for at least 2 years prior to his application for such practising certificate, that he shall not practise as a solicitor on his own account or in partnership until he satisfies the Council that since being admitted as a solicitor he has been bona fide employed in the practice of a solicitor in Hong Kong for at least 2 years.
- (6A) If the Council considers that an applicant has acquired substantial experience in the law either in Hong Kong or elsewhere, the Council may waive the 2 year employment requirement in subsection (6) or it may reduce the period of 2 years to a period it considers appropriate.
- (7) Where the name of a solicitor is removed from or struck off the roll of solicitors or where a solicitor becomes bankrupt, the practising certificate of that solicitor shall automatically determine and in any such case no part of the fee paid in respect thereof shall be repayable.
- (8) The publication in the Gazette by the Society of a list of the names and addresses of those solicitors who have obtained practising certificates for the period stated therein shall, until the contrary is proved, be evidence that each person named therein is a person qualified under section 7 to act as a solicitor and to whom a practising certificate for the period stated in such list has been issued under this section; and the absence from any such list of the name of any person shall, until the contrary is proved, be evidence that such person is an unqualified person.
- (9) Where the Society, in the exercise of the powers conferred on it under subsection (5) or (5A), refuses to issue a practising certificate, issues a certificate subject to conditions, amends a certificate by adding conditions or suspends or cancels a certificate, the solicitor may appeal to the Chief Judge against the decision of the Society within 1 month of being notified of it.
- (10) Where the Council refuses to disapply subsection (6) in the case of an applicant who claims to have acquired substantial experience in the law, either in Hong Kong or elsewhere, the applicant may appeal to the Chief Judge against the decision of the Council within 1 month of being informed of that decision.
- (11) On an appeal to the Chief Judge under subsection (9) or (10) he may-
- (a) affirm the decision of the Society or Council;
 - (b) direct the Society to issue a practising certificate to the appellant free from conditions or subject to such conditions as he thinks fit; or
 - (c) remit the matter to the Society or Council for reconsideration with such directions as he thinks fit.
- (12) Where the Chief Judge affirms a decision of the Society or Council under paragraph (a) of subsection (11) or directs the Society to issue a practising certificate under paragraph (b) of that subsection; the decision of the Chief Judge shall be final.

7. Qualifications for practising as solicitor

No person shall be qualified to act as a solicitor unless-

- (a) his name is for the time being on the roll of solicitors;
- (b) he is not suspended from practice;
- (c) he has in force a current practising certificate; and
- (d) he is complying with any indemnity rules made by the Council under section 73A that apply to him or is exempt from them.

7A. Solicitors may exercise functions of commissioner for oaths

- (1) For the purpose of administering and receiving an oath, affidavit or affirmation any solicitor who holds a current practising certificate shall possess and may exercise all the powers of a commissioner for oaths that are conferred by or under any law.
- (2) A document containing an oath, affidavit or affirmation administered and received under subsection (1) and purporting to be signed by a solicitor shall be admitted in evidence without proof of the signature of the solicitor, and without proof that he is a solicitor who holds a current practising certificate.

8. Accountant's reports

- (1) Every solicitor and foreign lawyer shall once in each period of 12 months ending with 31 October or such other date as may be prescribed by the Council, unless he satisfies the Council that owing to the circumstances of his case it is unnecessary so to do, deliver by post or otherwise to the Council a report signed by an accountant (hereinafter referred to as "an accountant's report") and containing such information as may be prescribed by rules made by the Council under section 73(1)(b):

Provided that an accountant's report shall be delivered to the Council not more than 6 months (or such other period as any rules made under section 73(1)(b) may prescribe) after the end of the accounting period specified in that report.

- (2) Subject as may be prescribed by the Council, the accounting period for the purposes of an accountant's report shall-
 - (a) begin at the expiry of the last preceding accounting period for which an accountant's report has been delivered;
 - (b) cover not less than 12 months;
 - (c) terminate not more than 6 months, or such lesser period as may be prescribed by the Council, before the date of the delivery of the report to the Council; and
 - (d) where possible, consistently with paragraphs (a), (b) and (c), correspond to a period or consecutive periods for which the accounts of the solicitor, or foreign lawyer, or his firm, are ordinarily made up.
- (3) If a solicitor or foreign lawyer fails to comply with the provisions of this section or any requirements relating to accounts which may be prescribed by the Council any person may make a complaint in respect of that failure to the Council.

8A. Council may examine documents if solicitor is unfit

- (1) Where the Council considers that a solicitor or foreign lawyer may be unfit to practise the Council may, if it considers it necessary for the purpose of investigating the matter, require the solicitor, the foreign lawyer or his firm to produce or deliver to a person appointed by the Council, at a time and place fixed by the Council, all documents in the possession of

the solicitor, the foreign lawyer or his firm that the Council specifies either particularly or generally.

- (2) Without limiting subsection (1), the Council may take the following factors into account in deciding whether to act under subsection (1) -
 - (a) the solicitor's or foreign lawyer's mental and physical health;
 - (b) the solicitor's or foreign lawyer's ability to supervise his practice;
 - (c) the nature and frequency of complaints made against the solicitor or foreign lawyer;
 - (d) the solicitor's or foreign lawyer's financial position;
 - (e) conviction of the solicitor or foreign lawyer for an offence for which a sentence of imprisonment is possible; and
 - (f) the number of successful claims made against the solicitor or foreign lawyer for negligence or breach of duty.
- (3) After considering a report of the person appointed under subsection (1) and any written representations made by or on behalf of the solicitor or foreign lawyer, if the Council considers that the solicitor or foreign lawyer is unfit to practise, the Council shall submit the matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel and may suspend the solicitor from practice or suspend the foreign lawyer's registration pending a decision of the Solicitors Disciplinary Tribunal constituted to deal with the matter.

8AA. Appointment and powers of inspector

- (1) The Council may appoint a person as an inspector to assist the Council -
 - (a) in verifying compliance by a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer with the provisions of this Ordinance or any practice direction issued by the Society;
 - (b) in determining for the purpose of section 9A whether the conduct of any-solicitor, foreign lawyer, trainee solicitor or employee of a solicitor or foreign lawyer should be inquired into or investigated; or
 - (c) in relation to an inquiry or investigation under section 9B.
- (2) For the purposes of subsection (1), an inspector may -
 - (a) in relation to any person who acts or purports to act as an employee of a solicitor in the premises of any court or place of lawful detention -
 - (i) question there and then the person as to his name, identity card number, the identity of any client for whom he acts or purports to act on that occasion and the name of the firm of which he acts or purports to act as the employee; and
 - (ii) require the person to produce for inspection there and then all documents in his possession that the inspector reasonably suspects to be relevant to any matter referred to in subsection (1)(a), (b) or (c) and copy or seize any of the documents; and
 - (b) (i) subject to subsection (3), require a solicitor, a foreign lawyer, or an employee of a solicitor or foreign lawyer to produce or deliver to him for inspection, at a time and place specified by him, all documents in the possession of the solicitor, foreign lawyer or employee of a solicitor or foreign lawyer that the inspector reasonably suspects to be relevant to

any matter referred to in subsection (1)(a), (b) or (c) and specifies particularly or generally; and

- (ii) copy or seize any of the documents produced or delivered under subparagraph (i).
- (3) An inspector shall not exercise his power under subsection (2)(b)(i) except under a direction of the Council to do so.
- (4) No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the exercise of any power under this section.
- (5) In this section, "identity card" means an identity card issued under the Registration of Persons Ordinance (Cap. 177).

8AAA. Additional powers of an inspector

- (1) In this section "inspector" means an inspector appointed under section 8AA.
- (2) The Council may direct an inspector to assist it in gathering evidence in respect of a matter the Council is considering for the purpose of deciding whether or not it should be submitted to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.
- (3) For the purposes of this section, an inspector may question -
 - (a) persons who are, or were at the material time, members or employees of any law firm; or
 - (b) where authorized by the Council, any other persons whom the inspector considers may be able to assist the Council.

8B. Document production and privilege

- (1) For the purpose of enforcing the production of documents required by the Council under section 8A, section 11 applies and references in section 11 to the Solicitors Disciplinary Tribunal and to the Chairman of the Solicitors Disciplinary Tribunal shall be deemed to be references respectively to the Council and to the President of the Society.
- (2) Documents required by the Council under section 8A or by an inspector under section 8AA shall be produced or delivered notwithstanding any claim of solicitor-client privilege but documents that are subject to a solicitor-client privilege may only be used for the purposes of an inquiry or investigation under this Ordinance.

9. Solicitors Disciplinary Tribunal Panel

- (1) The Chief Justice shall appoint a Solicitors Disciplinary Tribunal Panel consisting of not more than 120 practising solicitors of at least 10 years' standing, not more than 10 foreign lawyers and not more than 60 lay persons who are not, in the opinion of the Chief Justice, connected in any way with the practice of law.
- (2) A member of the Council is not eligible to be appointed to or remain on the Panel.
- (3) A person appointed to the Panel shall be appointed for a term specified by the Chief Justice not to exceed 5 years but may be reappointed for a further term or terms.
- (4) The Chief Justice shall appoint a solicitor as the Tribunal Convenor for a 3 year term and he may appoint one or more solicitors on the Panel and one or more foreign lawyers on the Panel as Deputy Tribunal Convenors for 3 year terms.
- (5) If the Tribunal Convenor is precluded by illness, absence from Hong Kong or any other cause from exercising his functions under this Ordinance, a Deputy Tribunal Convenor may act in his place.

- (6) The Tribunal Convenor and a Deputy Tribunal Convenor who acts in the place of the Tribunal Convenor in circumstances mentioned in subsection (5) may be remunerated by the Society.

9A. Complaint about solicitor's conduct

- (1) Where the Council considers that the conduct of a person who is, or was at the relevant time, a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer should be inquired into or investigated as a result of a complaint being made to it or otherwise, the Council shall submit the matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.
- (2) Where a complaint is made to the Council and the Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so.

9B. Solicitors Disciplinary Tribunal

- (1) On receipt of a submission under section 8A(3) or 9A in respect of a person who is, or was at the relevant time, a solicitor, a trainee solicitor or an employee of a solicitor the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel shall appoint from the Panel 2 solicitors and one lay person to constitute a Solicitors Disciplinary Tribunal to inquire into and investigate the matter.
- (1A) On receipt of a submission under section 8A(3) or 9A in respect of a person who is, or was at the relevant time, a foreign lawyer or an employee of a foreign lawyer the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel shall appoint from the Panel 2 solicitors, one foreign lawyer and one lay person to constitute a Solicitors Disciplinary Tribunal to inquire into and investigate the matter.
- (2) The Tribunal members shall elect as chairman one of its members who is a solicitor.
- (3) The Council may be represented at proceedings before the Tribunal.
- (4) The Tribunal shall sit in camera in the places and at the times it directs.
- (5) A member of the Tribunal who becomes a member of the Council may continue as a member of the Tribunal notwithstanding section 9(2).

10. Powers of a Solicitors Disciplinary Tribunal

- (1) A Solicitors Disciplinary Tribunal shall have power to inquire into and investigate the conduct of any person in respect of which it was appointed.
- (2) Subject to the provisions of this Ordinance, on completion of its inquiry and investigation, a Solicitors Disciplinary Tribunal shall have power to make such order as it thinks fit and any such order may, in particular, include provision for all or any of the following matters-
 - (a) striking off the roll of solicitors the name of the solicitor to whom the inquiry or investigation relates;
 - (b) suspending that solicitor from practice for such period as the Solicitors Disciplinary Tribunal shall think fit;
 - (ba) permitting the solicitor to continue practice, but subject to conditions which may be imposed for up to 3 years;
 - (bb) payment by that solicitor or foreign lawyer to the complainant of an amount not exceeding the amount paid to the solicitor or foreign lawyer by way of fees and disbursements in relation to the complainant's matters in dispute;

- (bc) payment by that solicitor to a fund established under section 73A of an amount not greater than an amount paid out of the fund in respect of that solicitor;
 - (c) payment by that solicitor of a penalty not exceeding \$500,000 which shall be paid into the general revenue;
 - (d) censure of that solicitor or, if the inquiry or investigation relates to a solicitor's employee or trainee solicitor, of such employee or trainee solicitor;
 - (e) payment by any party of the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or payment of an amount that the Tribunal considers is a reasonable contribution towards those costs;
 - (f) cancellation or suspension of the trainee solicitor contract of the trainee solicitor to whom the inquiry or investigation relates;
 - (g) prohibition of employment by any solicitor or foreign lawyer of any solicitor's employee or trainee solicitor or foreign lawyer's employee, to whom the inquiry or investigation relates, for such period as the Solicitors Disciplinary Tribunal may decide;
 - (h) cancelling the registration of the foreign lawyer to whom the inquiry or investigation relates;
 - (i) suspending the registration of the foreign lawyer for a period that the Solicitors Disciplinary Tribunal considers appropriate;
 - (j) imposing conditions for the continued registration of the foreign lawyer for up to 3 years;
 - (k) payment by the foreign lawyer to the complainant of an amount not exceeding the amount paid to the foreign lawyer by way of fees and disbursements in relation to the complainant's matters in dispute;
 - (l) payment by the foreign lawyer of a penalty not exceeding \$500,000 which shall be paid into the general revenue; and
 - (m) censure of the foreign lawyer or, if the complaint or investigation relates to a foreign lawyer's employee, censure of that employee.
- (3) Every order made under subsection (2) shall be filed with the secretary of the Society and shall be available for inspection by any person affected during such hours as the Council may prescribe.
- (4) An order that may be made under subsection (2) may also be made in respect of a person who was, at the relevant time, a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer.

11. Ancillary powers of a Solicitors Disciplinary Tribunal

- (1) For the purpose of conducting any such inquiry or investigation, a Solicitors Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters-
 - (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
 - (b) compelling the production of documents;
 - (c) punishing persons guilty of contempt;
 - (d) ordering an inspection of any property;

- (e) conducting the examination of witnesses; and
- (f) adjourning any meeting from time to time and from one place to another,

and a summons under the hand of the Chairman of a Solicitors Disciplinary Tribunal may be substituted for and shall be equivalent to any form of process capable of being issued in any action or suit for compelling the attendance of witnesses or the production of documents and any warrant of committal to prison issued for the purpose of enforcing any such powers as aforesaid shall be under the hand of such Chairman and shall not authorize the imprisonment of any offender for a period exceeding 1 month.

- (2) The Commissioner of Police and all police officers, officers of the court, gaolers and bailiffs of the court are required to give their utmost assistance to every Solicitors Disciplinary Tribunal and to every chairman thereof, in the enforcement of documents, warrants and orders issued in accordance with subsection (1) or otherwise.
- (3) Every member of a Solicitors Disciplinary Tribunal shall have the like protection and privileges, in relation to any action or suit brought against him for any act done or omitted to be done in the execution of his duties as such member, as is given by any law to a magistrate acting in the execution of his office.
- (4) All proceedings of a Solicitors Disciplinary Tribunal and any order made in accordance with the provisions of section 10 shall be privileged.

12. Findings of Solicitors Disciplinary Tribunal

- (1) An order made by a Solicitors Disciplinary Tribunal shall include a statement of its findings in relation to the facts of the case and shall be signed by the chairman or by a member authorized by the Tribunal.
- (2) A signed copy of an order of a Tribunal in relation to a solicitor shall be filed with the Registrar who shall enter a note of the order on the roll of solicitors in connection with the name of the solicitor and, where the order so directs, the Registrar shall strike off the name and shall publish an order for suspension or striking off in the Gazette within 14 days after receiving a copy of the order.
- (2A) A signed copy of an order of a Tribunal in relation to a foreign lawyer shall be filed with the Secretary General of the Society and, where the order so directs, the Secretary General shall publish an order for suspension or cancellation of the registration in the Gazette within 14 days after receiving a copy of the order.
- (3) The Tribunal that heard the matter or a Tribunal constituted for the purpose by the Tribunal Convenor may, on the application of a party against whom an order for payment is made, order that payment may be paid by instalments or be deferred for a period the Tribunal considers appropriate.
- (4) An application for an order for payment by instalments, or for the deferring of payment, may be made at the hearing or, within 14 days after the date of the order for payment, by notice in writing to the Tribunal Convenor and to all parties who were represented at the Tribunal hearing.
- (5) On receipt of a notice under subsection (4), the Tribunal Convenor shall, within 14 days, notify the applicant and the other parties of the date on which the application will be heard by a Tribunal.
- (6) There is no right of appeal from the decision of the Tribunal on an application under subsection (4).
- (7) Payment of an amount ordered to be paid by the Tribunal may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the chairman or other authorized member of the Tribunal and the rules of the Court, so far as applicable, apply to the order.

- (8) No order under subsection (7) shall be enforced until after the 14 days referred to in subsection (4) has elapsed or until after the Tribunal has made its decision under subsection (3).

13. Appeal and saving

- (1) Subject to section 12(6), an appeal against any order made by a Solicitors Disciplinary Tribunal shall lie to the Court of Appeal and the provisions of Order 59 of the Rules of the High Court (Cap. 4 sub. leg.) shall apply to every such appeal save that the time for serving notice of motion of appeal shall be 21 days from the date of the decision and not 6 weeks as provided in the said Order and the decision of the Court of Appeal on any such appeal shall be final.
- (2) Subject to subsection (2A), in any appeal under subsection (1) the Society shall be the respondent.
- (2A) The Council may, with leave of the Court of Appeal, appeal an order of a Solicitors Disciplinary Tribunal under subsection (1), in which case the Society shall be the appellant and the person whose conduct was the subject of the inquiry by the Solicitors Disciplinary Tribunal shall be the respondent.
- (3) Nothing herein contained shall affect the jurisdiction of the Court under sections 3(2) and 45.
- (4) The hearing of every appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal may otherwise direct.

13A. Publication of findings of Solicitors Disciplinary Tribunal

Unless, on application by the solicitor, the Solicitors Disciplinary Tribunal or the Court of Appeal, on an appeal under section 13, otherwise orders, the Society may, after the expiry of the time for filing an appeal under section 13 or after completion of such an appeal, as the case may be, publish a summary of the finding and order of a Solicitors Disciplinary Tribunal and the name of the solicitor who was the subject of the finding and order in any publication produced by, or at the direction of, the Society.

14. (Repealed)

15. (Repealed)

16. Restrictions on powers to strike names off roll

- (1) No solicitor shall be liable to have his name struck off the roll of solicitors on account of any failure to comply with such requirements with respect to employment as a trainee solicitor as may be prescribed by the Chief Justice or on account of any defect in his admission and enrolment, unless the application to strike his name off the roll of solicitors is made within 12 months after the date of his enrolment:

Provided that this subsection shall not apply in any case where fraud is proved to have been committed in connection with the failure or defect.

- (2) No solicitor shall be liable to have his name struck off the roll of solicitors by reason only that-
- (a) a solicitor who employed him or acted as his principal for the whole term or such part of a term of a trainee solicitor contract as may be prescribed by the Chief Justice has neglected or omitted to take out a practising certificate in accordance with the provisions of section 6; or
- (b) the name of a solicitor who employed him as a trainee solicitor or acted as his principal for any period has after the termination of that period been struck off the roll of solicitors.

17. Council may inspect proceedings in bankruptcy

The Council shall be entitled, without payment of any fee, to inspect the file of proceedings in bankruptcy relating to any solicitor or foreign lawyer against whom proceedings in bankruptcy have been taken, and to be supplied with office copies of the proceedings on payment of the usual charges for such copies.

18. Winding-up, etc. of business of solicitors struck off or suspended

- (1) The Court may make an order for the winding-up of the business of any solicitor who is struck off the roll of solicitors or of any foreign lawyer whose registration is cancelled in such terms and appointing such solicitor or firm of solicitors or the Official Receiver under the Bankruptcy Ordinance (Cap. 6) or both as it thinks fit for that purpose.
- (2) The Court may make an order appointing any solicitor or firm of solicitors or the Official Receiver or both to manage the business of any solicitor, whose practising certificate is suspended, for the duration of such suspension.
- (3) The Court may make an order appointing a solicitor, firm, foreign lawyer, foreign firm, the Officer Receiver or any combination of them to manage the business of a foreign lawyer whose registration is suspended, for the duration of the suspension.

19. Removal from roll

- (1) Upon reasonable cause being shown to the Council by a solicitor the Council may direct the Registrar to remove the name of such solicitor from the roll of solicitors and the Registrar shall thereupon remove such name from the roll of solicitors.
- (1A) Upon reasonable cause being shown to the Council by a foreign lawyer or foreign firm, the Council may direct the Secretary General of the Society to cancel the registration of the foreign lawyer or foreign firm and the Secretary General shall then cancel the registration.
- (2) With effect from the date of removal of a name under this section the person whose name is so removed shall cease to be a solicitor.
- (3) Upon application being made for removal or cancellation as aforesaid the Council may advertise or require the solicitor, foreign lawyer or foreign firm to advertise the application inviting any person who objects thereto to make objection to the Council.
- (4) Where the Registrar is satisfied that a person who was admitted as a solicitor under section 3(1AD) before the repeal of that provision by the Legal Practitioners (Amendment) Ordinance 1994 (60 of 1994) would no longer be qualified under paragraph (a) of that provision if it were still in force, he shall, unless the person has become qualified otherwise under this Ordinance, remove his name from the roll of solicitors.
- (5) Without prejudice to the generality of subsection (1), where a person admitted under section 3(1AB) before that and related provisions ceased to have effect by virtue of section 75(2) does not commence practice as a solicitor within a period of 12 months after his admission, it shall be a cause for the removal of his name from the roll of solicitors under this section.

20. Restrictions on employing trainee solicitors

- (1) No person who has not at some time been in continuous practice as a solicitor in Hong Kong for a period of 5 years shall, without the special leave in writing of the Society, employ a trainee solicitor or act as his principal.
- (2) No person shall employ or act as principal for more than 2 trainee solicitors at the same time.
- (3) No person shall employ a trainee solicitor or act as his principal unless he is practising as a solicitor on his own account or in partnership, without the special leave in writing of the Society.

- (4) If any solicitor employs or acts as principal for a trainee solicitor in contravention of any of the provisions of subsection (1), (2) or (3), the Council may terminate the trainee solicitor's contract upon such terms as it thinks fit.
- (4A) It is not a contravention of subsection (1), (2) or (3) for a person other than a solicitor to employ a trainee solicitor so long as -
- (a) the trainee solicitor is assigned to a solicitor who acts as his principal;
 - (b) the solicitor who acts as principal is qualified under and complies with subsections (1), (2) and (3); and
 - (c) the solicitor is employed by the same person as the trainee solicitor.
- (5) Any-
- (a) solicitor; or
 - (b) qualified person,
serving in the-
 - (i) Department of Justice; or
 - (ii) the Legal Advisory and Conveyancing Office of the Buildings and Lands Department; or
 - (ia) the Land Registry; or
 - (iib) the Companies Registry; or
 - (iii) Legal Aid Department; or
 - (iv) Official Receiver's Office; or
 - (v) Intellectual Property Department
- of the Government shall, for the purpose of this section, be deemed to be practising as a solicitor on his own account; and this subsection shall apply in relation to periods before as well as periods after the commencement of the Legal Practitioners (Amendment) Ordinance 1982.
- (6) (Repealed)
- (7) (Repealed)

21. Power to prohibit employing trainee solicitors

- (1) Where the Society refuses to issue a practising certificate to a solicitor under section 6, the Council may by notice in writing to that solicitor prohibit him from employing a trainee solicitor or acting as the principal of a trainee solicitor.
- (2) (Repealed)

22. Power to discharge trainee solicitor contracts in certain cases

If either-

- (a) during the term of a trainee solicitor contract a trainee solicitor has been continuously absent from the place of business of his principal for a period of 3 months or such longer period as may be prescribed by the Council except for such reason as may be prescribed by the Council; or

- (b) the Council is for any other reason of the opinion that a trainee solicitor contract ought to be terminated,

the Council may, on application of the solicitor, the trainee solicitor or any other person, terminate the trainee solicitor contract on such terms as it shall think fit and may determine what, if any, of the period of employment of the trainee solicitor shall be effective for the purposes of this Ordinance.

23. Termination of trainee solicitor contracts in cases of bankruptcy, etc.

If a solicitor who employs a trainee solicitor or acts as his principal becomes bankrupt before the expiration of the trainee solicitor contract or is imprisoned for debt and remains in prison for more than 21 days, the Court, on the application of any person, may order the trainee solicitor contract to be terminated or to be assigned to another solicitor on such terms and in such manner as the Court thinks fit.

24. Society's general right of audience

The Society shall have a general right of audience by any member of the Society appointed for that purpose by the Society or by any counsel, before-

- (a) a Solicitors Disciplinary Tribunal; and
- (b) the Court on the hearing of any matter under this Ordinance that does not solely affect barristers,

and in any such case, whether the Society has or is seeking audience or not, the Society shall be served with a copy of every necessary document filed with the Registrar.

25. Expenses of Solicitors Disciplinary Tribunal and of Society

- (1) The expenses incurred by-
 - (a) a Solicitors Disciplinary Tribunal; and
 - (b) the Society, in connection with proceedings before a Solicitors Disciplinary Tribunal and any appeal under section 13,may be paid to the Society out of general revenue upon a certificate issued by the Secretary for Justice.
- (2) The Secretary for Justice shall only issue a certificate under subsection (1) if he is satisfied that-
 - (a) the expenses were necessarily incurred by the Solicitors Disciplinary Tribunal or the Society, as the case may be, in exercise of the powers or duties conferred or imposed by this Ordinance;
 - (b) the amount of such expenses is reasonable; and
 - (c) the expenses could not reasonably be recovered from the person whose conduct is the subject of the proceedings before the Solicitors Disciplinary Tribunal or the Court of Appeal, as the case may be.
- (3) In this section, "expenses" includes witnesses' expenses and fees, counsel's fees, solicitor's fees, auditor's fees and other charges and disbursements.

26. Statutory provisions to prevail over Society's articles

In the case of any inconsistency between the provisions of this Ordinance and the Memorandum and Articles of Association of the Society the provisions of this Ordinance shall prevail.

PART IIA

CIRCUMSTANCES IN WHICH LAW SOCIETY MAY INTERVENE

26A. Circumstances in which powers conferred by Schedule 2 exercisable

- (1) Subject to subsection (2), the powers conferred by Schedule 2 shall be exercisable where -
- (a) the Council has reason to suspect dishonesty on the part of -
 - (i) a solicitor or foreign lawyer; or
 - (ii) an employee or a trainee solicitor of a solicitor or a foreign lawyer; or
 - (iii) the personal representatives of a deceased solicitor or foreign lawyer, in connection with that solicitor's or foreign lawyer's practice or in connection with any trust of which that solicitor or foreign lawyer immediately before the date of his death or formerly was a trustee,and the Council considers the exercise of those powers is in the interests of the public or the clients of the solicitor or foreign lawyer;
 - (b) the Council considers that there has been undue delay on the part of the personal representatives of a deceased solicitor or foreign lawyer who immediately before his death was practising as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name in connection with that solicitor's or foreign lawyer's practice or in connection with any controlled trust;
 - (c) the Council is satisfied that a solicitor or foreign lawyer has failed to comply with rules made by virtue of section 73(1)(b) or 73A;
 - (d) a solicitor or foreign lawyer has become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6);
 - (e) a solicitor or foreign lawyer has been committed to prison in any civil or criminal proceedings;
 - (f) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name is incapacitated by illness or accident to such an extent as to be unable to attend to his practice;
 - (g) the powers conferred by section 10D of the Mental Health Ordinance (Cap. 136) (emergency powers) or section 11 of that Ordinance (appointment of committee) have been exercised in respect of a solicitor or foreign lawyer;
 - (h) the name of a solicitor has been removed from or struck off the roll or a solicitor has been suspended from practice or the registration of a foreign lawyer is cancelled or suspended;
 - (i) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name has abandoned his practice;
 - (j) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name is incapacitated by age to such an extent as to be unable to attend to his practice;
 - (k) any power conferred by this Part and Schedule 2 has been exercised by virtue of paragraph (a) in relation to a solicitor or foreign lawyer who practises as a

solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name and he has acted as a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name within the period of 18 months beginning with the date on which it was so exercised;

- (l) the Council is satisfied that a person has acted as a solicitor at a time when he did not have a practising certificate which was in force;
 - (m) the Council is satisfied that a solicitor has failed to comply with any condition, subject to which his practising certificate was granted or otherwise has effect, to the effect that he may act as a solicitor only -
 - (i) in employment which is approved by the Council in connection with the imposition of that condition;
 - (ii) as a member of a partnership which is so approved; or
 - (iii) in any specified combination of those ways;
 - (n) the Council is satisfied that a solicitor or foreign lawyer has failed to make satisfactory arrangements within 21 days from the date of the closure of his practice.
- (2) The powers conferred by Schedule 2 shall only be exercisable under subsection (1)(c), (j), (k), (l) and (m) if the Council has given the solicitor notice in writing that the Council is satisfied that he has failed to comply with rules specified in the notice and also (at the same or any later time) notice that the powers conferred by Schedule 2 are accordingly exercisable in his case.
- (3) In this Part and Schedule 2 -

"controlled trust", in relation to a solicitor or foreign lawyer, means a trust of which he is a sole trustee or co-trustee only with one or more of partners, employees or trainee solicitors;

"trust" includes an implied or constructive trust and a trust where the trustee has a beneficial interest in the trust property, and also includes the duties incidental to the office of a personal representative, and "trustee" shall be construed accordingly.

26AA. (Repealed)

26B. Death of sole solicitor or foreign lawyer

On the death of a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name sections 2, 3 and 4 of Schedule 2 shall apply to the client accounts of his practice.

26C. Undue delay by solicitors or foreign lawyers in connection with clients' instructions

The powers conferred by Schedule 2 shall also be exercisable, subject to sections 1(4) and 8(3) of that Schedule, where -

- (a) a complaint is made to the Council that there has been undue delay on the part of a solicitor or foreign lawyer in connection with any matter in which the solicitor or his firm or the foreign lawyer or his firm was instructed on behalf of a client or with any controlled trust; and
- (b) the Council by notice in writing invites the solicitor or foreign lawyer to give an explanation within a period of not less than 8 days specified in the notice; and
- (c) the solicitor or foreign lawyer fails within that period to give an explanation which the Council regards as satisfactory; and

- (d) the Council gives notice of the failure to the solicitor or foreign lawyer and (at the same or any later time) notice that the powers conferred by Schedule 2 are accordingly exercisable.

26D. Powers conferred by Schedule 2 exercisable after death of solicitor

- (1) Where the powers conferred by Schedule 2 are exercisable in relation to a solicitor or foreign lawyer, they shall continue to be exercisable after his death or after his name has been removed from or struck off the roll (in the case of a solicitor) or his registration is cancelled or suspended (in the case of a foreign lawyer).
- (2) The references to the solicitor or his firm or the foreign lawyer or his firm in sections 1(1), 2(2) and (3), 3, 7(1) and (5) and 8(1) of Schedule 2 include, in any case where the solicitor or foreign lawyer has died, references to his personal representatives.

PART III

BARRISTERS

27. Power of Court to admit barristers

- (1) The Court may, in such manner as may be prescribed by the Chief Justice, admit as a barrister of the High Court in Hong Kong, any person who satisfies the following requirements, that is to say-
- (a) (i) he has been called to the Bar in England or Northern Ireland;
 - (ii) he has been admitted as an advocate in Scotland;
 - (iii) he is a Bachelor of Laws of the University of Hong Kong, the City University of Hong Kong or the City Polytechnic of Hong Kong and has obtained a Postgraduate Certificate in Laws;
 - (iv) he has obtained a Postgraduate Certificate in Laws and he is a Hong Kong permanent resident within the meaning of the Immigration Ordinance (Cap. 115), or is a Commonwealth citizen or citizen of the Republic of Ireland who has been ordinarily resident in Hong Kong for a period of at least 7 years; or
 - (v) he has been admitted as a solicitor in Hong Kong for at least 3 years immediately or recently before the date of his application for admission and during that time he was in practice as a solicitor in Hong Kong or employed in the public service of the Government as a legal officer;
- (b) he is not at the time of the application disbarred or removed from the roll of advocates in Scotland or suspended from practice as such barrister or advocate;
- (c) he is not in practice as a solicitor either on his own account or as a partner or salaried employee in a firm of solicitors practising in Hong Kong;
- (d) (Repealed)
- (e) he has been ordinarily resident in Hong Kong for a period of at least 8 consecutive months immediately prior to the date of his application for admission or satisfies the Court that he intends to be ordinarily resident in Hong Kong.
- (1A) In addition to the requirements under subsection (1)(a)(i) or (ii), a person must also-
- (a) have practised as a barrister or advocate in the United Kingdom for at least 3 years;
 - (b) be a Hong Kong permanent resident as defined in the Immigration Ordinance (Cap. 115); or
 - (c) have been ordinarily resident in Hong Kong for at least 7 years.
- (1B) If at the time of admission under subsection (1) the person is a solicitor, the Registrar shall remove the person's name from the roll of solicitors.
- (2) The Court may admit a person as a barrister under this section-
- (a) (Repealed)
 - (b) either generally or for the purpose of any particular case or cases and may impose on a person so admitted restrictions and conditions as the Court may see fit, notwithstanding that such person does not satisfy the requirements of subsection (1)(e) and subsection (1A).

- (3) The Court may, when admitting a person as a barrister, sit in chambers.
- (4) In this section-
 - "Commonwealth citizen" means a person who is recognized by the law of a Commonwealth country as being a citizen of that country;
 - "Commonwealth country" means a country that is an independent sovereign member of the Commonwealth.
 - "legal officer" means -
 - (a) a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87);
 - (b) a person appointed under section 3 of the Legal Aid Ordinance (Cap. 91); and
 - (c) any person deemed to be a legal officer for the purpose of the Legal Officers Ordinance (Cap. 87), by virtue of section 75(3) of the Bankruptcy Ordinance (Cap. 6) or section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).

27A. Additional power of Court to admit barristers

- (1) In addition to the powers conferred on it by section 27, but subject to subsection (2), the Court may, after the Chief Judge has consulted the Secretary for Justice and the Bar Council, admit a person as a barrister of the High Court of Hong Kong, in such manner as may be prescribed by the Chief Justice, if the Court is satisfied that he-
 - (a) has been admitted as a barrister in a jurisdiction listed in Schedule 1 or if there is no admission of barristers in such jurisdiction, as a legal practitioner in that jurisdiction;
 - (b) has experience in advocacy;
 - (c) has been employed for at least 7 years in the Department of Justice of the Government as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87);
 - (d) has been so employed-
 - (i) for a period of at least 3 years; and
 - (ii) either immediately or recently before the date of his application for admission,

on work similar to that usually undertaken in the course of his practice by a barrister in Hong Kong of 10 years seniority; and
 - (e) (Repealed)
- (2) The Court shall not admit as barristers, under subsection (1), more than 4 persons in any period of 12 months.
- (3) (Repealed)

28. Formalities for admission as a barrister

Save as may be prescribed by the Chief Justice, no person shall be admitted as a barrister unless he has deposited with the Registrar his certificate of call to the Bar in England or Northern Ireland, his certificate of admission as an advocate in Scotland, documentary evidence of his practice or employment in the case of an admission under section 27(1)(a)(v) or his Postgraduate Certificate in Laws, as the case may be, and has filed in the Court an affidavit of identity in such form as may be prescribed by the Chief Justice together with an affidavit showing the manner in which he satisfies the requirements set out in section 27(1).

31B. Status of visiting Queen's Counsel

A Queen's Counsel of another jurisdiction who is appearing in legal proceedings before a court in Hong Kong is entitled to use the title, and to be accorded the status, of Senior Counsel for the purposes of those proceedings.

32. (Repealed)

33. Bar Council - general right of audience

The Bar Council shall have a general right of audience, by any member of the Bar Council appointed for that purpose by the Bar Council or by any other counsel-

- (a) before a Barristers Disciplinary Tribunal; and
- (b) before the Court on the hearing of-
 - (i) any application to the Court for admission and enrolment as a barrister; and
 - (ii) any proceedings in the Court relating to, affecting or touching any matter affecting the qualification or examination of a person seeking to be a barrister or affecting the privileges, restrictions or offences in connection with the professional practice, conduct and discipline of a barrister,

and in any such case, whether the Bar Council has or is seeking audience or not, the Bar Council shall be served with a copy of every necessary document filed with the Registrar.

***34. Barristers Disciplinary Tribunal Panel**

- (1) The Chief Justice is required to appoint a Barristers Disciplinary Tribunal Panel consisting of -
 - (a) no fewer than 6 and no more than 15 practising Senior Counsel of Hong Kong; and
 - (b) no fewer than 6 and no more than 20 other practising barristers of at least 7 years' standing; and
 - (c) no fewer than 5 and no more than 25 lay persons who are not, in the opinion of the Chief Justice, in any way connected with the practice of the law.
- (2) A member of the Bar Council is not eligible to be appointed to or remain on the Panel.
- (3) A person appointed to the Panel shall be appointed for a term specified by the Chief Justice not to exceed 5 years but may be reappointed for a further term or terms.
- (4) The Chief Justice shall appoint one of the barristers on the Panel as the Tribunal Convenor for a 3 year term and he may appoint one or more other barristers on the Panel as Deputy Tribunal Convenors for 3 year terms.
- (5) A Deputy Tribunal Convenor designated by the Tribunal Convenor may act in place of the Tribunal Convenor whenever the Tribunal Convenor is prevented from exercising the Tribunal Convenor's functions because of illness, absence from Hong Kong or any other cause.

35. Complaint about barrister's conduct

- (1) Where the Bar Council considers that the conduct of a barrister should be inquired into as a result of a complaint being made to it or otherwise, the Bar Council shall submit the matter to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel.

* Please see the savings and transitional provisions contained in s.3 of Schedule 2 to 94 of 1997, which section is reproduced immediately after s.75.

- (2) Where a complaint is made to the Bar Council and the Bar Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Bar Council ought to have done so.
- (3) A matter submitted to the Tribunal Convenor must include or be accompanied by particulars of the conduct that is to be inquired into and by particulars of any associated allegations of misconduct.

35A. Barristers Disciplinary Tribunal

- (1) On receiving a submission under section 35, the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel is required to appoint from the Panel -
 - (a) a Senior Counsel; and
 - (b) a barrister who is not a Senior Counsel; and
 - (c) a lay person.
- (2) The persons so appointed constitute a Barristers Disciplinary Tribunal to inquire into the conduct of the barrister concerned.
- (3) When constituting a Barristers Disciplinary Tribunal, the Tribunal Convenor is also required to appoint one of its members as chairman of the Tribunal.
- (4) A Barristers Disciplinary Tribunal may be constituted by the chairman and by one other member designated by the chairman for the purposes only of -
 - (a) giving directions or making orders for the conduct of an inquiry under section 36; and
 - (b) announcing the findings of the Tribunal with respect to the inquiry.
- (5) A member of a Barristers Disciplinary Tribunal who becomes a member of the Bar Council ceases to be a member of the Tribunal.

35B. Sittings of Barristers Disciplinary Tribunal

- (1) A Barristers Disciplinary Tribunal is required to sit at such places and at such times as the chairman of the Tribunal directs.
- (2) A Barristers Disciplinary Tribunal is required to hold its proceedings in camera, except when the barrister whose conduct is being inquired into requests that the proceedings be open to the public.

36. Powers of Barristers Disciplinary Tribunal

- (1A) A Barristers Disciplinary Tribunal may inquire into the conduct of any person in respect of which it was constituted.
- (1) For the purpose of conducting an inquiry, a Barristers Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters-
 - (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
 - (b) compelling the production of documents;

- (d) ordering an inspection of any property;
- (e) conducting every examination of witnesses; and
- (f) adjourning any meeting from time to time and from one place to another,

and a summons under the hand of the chairman of a Barristers Disciplinary Tribunal may be substituted for and shall be equivalent to any form of process capable of being issued in any action or suit for compelling the attendance of witnesses or the production of documents and any warrant of committal to prison issued for the purpose of enforcing any such powers must be signed by the chairman but must not authorize the imprisonment of any offender for a period exceeding 1 month.

- (2) The Commissioner of Police and all police officers, officers of the court, gaolers and bailiffs of the court are required to give their utmost assistance to every Barristers Disciplinary Tribunal and to every chairman thereof, in the enforcement of documents, warrants and orders issued in accordance with subsection (1) or otherwise.
- (3) Every member of a Barristers Disciplinary Tribunal shall have the like protection and privileges, in relation to any action or suit brought against him for any act done or omitted to be done in the execution of his duties as such member, as is given by any law to a magistrate acting in the execution of his office.
- (4) All proceedings of a Barristers Disciplinary Tribunal are privileged.
- (5) A Barristers Disciplinary Tribunal constituted to inquire into the conduct of a person may inquire into the conduct of the person, but only if -
 - (a) the person has been given reasonable notice and adequate particulars of that other conduct; and
 - (b) the Tribunal is satisfied that that other conduct is related to the first-mentioned conduct.
- (6) The power conferred by subsection (5) is exercisable only on the application of -
 - (a) the Bar Council in the case of a matter submitted to the Tribunal Convenor under section 35(1); or
 - (b) the Chief Judge in the case of a matter submitted to the Tribunal Convenor under section 35(2).
- (7) Notice is not reasonable for the purposes of subsection (5) if it is less than 7 days.
- (8) A Barristers Disciplinary Tribunal may make such order as to the payment by a party to an inquiry of the costs incurred in conducting the inquiry as it thinks just. Such an order may direct that the costs are to be taxed by a Master of the High Court on a full indemnity basis.

37. Disciplinary powers of Barristers Disciplinary Tribunal

On completion of its inquiry, the Barristers Disciplinary Tribunal may do one or more of the following -

- (a) censure the barrister;
- (b) suspend the barrister from practising for a period it specifies;
- (c) order that the barrister's name be struck off the roll of barristers;
- (d) order the barrister to pay to the complainant an amount not exceeding the amount or amounts paid or payable to the barrister in relation to the complainant's matters in dispute;

- (e) order the barrister to pay a penalty not exceeding \$500,000, which shall be paid into the general revenue;
- (f) order the barrister to pay the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or an amount that the Tribunal considers to be a reasonable contribution towards those costs;
- (g) make any other order it thinks fit.

37A. Findings of a Barristers Disciplinary Tribunal

- (1) An order made by a Barristers Disciplinary Tribunal shall include a statement of its findings in relation to the facts of the case and shall be signed by the chairman or by a member authorized by the Tribunal.
- (2) A signed copy of an order of a Tribunal shall be filed with the Registrar who shall enter a note of the order on the roll of barristers against the name of the barrister and, where the order so directs, the Registrar shall strike off the name and shall publish an order for suspension or striking off in the Gazette within 14 days after receiving a copy of the order.
- (3) The Tribunal that heard the matter or a Tribunal constituted for the purpose by the Tribunal Convenor may, on the application of a party against whom an order for payment is made, order that payment may be paid by instalments or be deferred for a period the Tribunal considers appropriate.
- (4) An application for an order for payment by instalments, or for the deferring of payment, may be made at the hearing or, within 14 days after the date of the order for payment, by notice in writing to the Tribunal Convenor and to all parties who were represented at the Tribunal hearing.
- (5) On receipt of a notice under subsection (4), the Tribunal Convenor shall, within 14 days, notify the applicant and the other parties of the date on which the application will be heard by a Tribunal.
- (6) There is no right of appeal from the decision of the Tribunal on an application under subsection (4).
- (7) Payment of an amount ordered to be paid by the Tribunal may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the chairman or other authorized member of the Tribunal and the rules of the Court, so far as applicable, apply to the order.
- (8) No order under subsection (7) shall be enforced until after the 14 days referred to in subsection (4) has elapsed or until after the Tribunal has made its decision under subsection (3).

37B. Appeal to Court of Appeal

- (1) A person who is the subject of an order under section 37 or 38 may appeal to the Court of Appeal and Order 59 of the Rules of the High Court (Cap. 4 sub.leg.) applies to the appeal except that the time for serving the notice of appeal is 21 days from the date of the decision and not 6 weeks as provided in Order 59 and the decision of the Court of Appeal is final.
- (2) In an appeal under this section the Bar Council shall be the respondent.
- (3) The hearing of an appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal otherwise directs.

PART IV

NOTARIES PUBLIC

40. Registration of notaries public

The Registrar shall register every notary public who, to the satisfaction of the Registrar, produces to the Registrar his notarial faculty and who files in the Court an affidavit of identity in such form and pays such enrolment fee as may be prescribed by the Chief Justice.

41. Register of notaries public

The Registrar shall keep a register of notaries public registered by him under section 40 and shall have custody of the register of notaries public and of all documents relating thereto and shall allow any person to inspect the register of notaries public during office hours without payment.

42. Power of Court to strike off or suspend a notary public

- (1) The Court, upon reasonable cause being shown, may remove from or strike off the register of notaries public or suspend from practice any notary public.
- (2) Upon the making of any order by the Court under subsection (1) the Registrar shall enter a note of the order on the register of notaries public in connection with the name of the notary public and, where the order so directs, shall remove or strike off the name.

43. Restoration of name of notary public

The Chief Judge may, if he thinks fit, at any time order the Registrar to replace on the register of notaries public the name of a notary public whose name has been removed or struck off therefrom.

PART V

PRIVILEGES, RESTRICTIONS AND OFFENCES IN CONNECTION WITH PRACTICE

44. Penalty for unlawfully practising as a barrister or notary public

Any person who-

- (a) not being a qualified barrister, either directly or indirectly, practises or acts as a barrister;
- (b) not being a qualified notary public, either directly or indirectly, practises or acts as a notary public,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.

45. Unqualified person not to act as solicitor

- (1) A person who, by virtue of section 7, is not qualified to act as a solicitor shall not act as a solicitor, or as such sue out any writ or process, or commence, carry on or defend any action, suit or other proceeding, in the name of any other person or in his own name, in any court of civil or criminal jurisdiction or act as a solicitor in any cause or matter, civil or criminal, to be heard or determined before any court or magistrate.
- (2) Any person who contravenes the provisions of this section shall-
 - (a) be guilty of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly;
 - (b) be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting; and
 - (c) be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000 and to imprisonment for 2 years.
 - (d) (Repealed)
- (3) (Repealed)

46. Penalty for pretending to be a solicitor, etc.

- (1) Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or recognized by law as qualified to act as, a solicitor shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (2) Any person who -
 - (a) not being an employee of a solicitor, a barrister or a foreign lawyer, wilfully pretends to be, or takes or uses any title, addition or description implying that he is, such an employee;
 - (b) without the authority of a solicitor, a barrister, a foreign lawyer or a trainee solicitor, purports to act with such authority,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.

51. Application of penal provisions to body corporate

- (1) If any act is done by a body corporate, or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified or recognized by law as qualified to act as a solicitor, the body corporate shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000, and, in the case of an act done by a director, officer or servant of the body corporate, such person shall also be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (2) For the avoidance of doubt, it is hereby declared that in sections 45, 46, 47, 48, 49, 50 and 50B, references to unqualified persons and to persons include references to a body corporate.

52. Solicitors not to commence or defend actions while in prison

- (1) No solicitor whilst a prisoner in any prison shall as a solicitor, in his own name or in the name of any other solicitor, sue out any writ or process, or commence, prosecute or defend any action or any matter in bankruptcy.
- (2) Any solicitor commencing, prosecuting or defending any such action or matter in contravention of this section shall be incapable of maintaining any action for the recovery of any costs in respect of any business done by him whilst so confined as aforesaid, and he and any solicitor permitting him to commence, prosecute or defend any such action or matter in his name shall be guilty of contempt of the court in which such action or matter was commenced or prosecuted and may be punished accordingly.

53. Employment by solicitor of persons struck off or suspended

- (1) No solicitor shall, in connection with his practice as a solicitor, without the written permission of the Society which may be given for such period and subject to such conditions as the Society thinks fit, employ or remunerate any person who, to his knowledge, -
 - (a) is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll of solicitors or is suspended from practising as a solicitor or whose practising certificate has been determined by virtue of section 6(7) in consequence of having become bankrupt; or
 - (b) was a foreign lawyer whose registration was cancelled other than under section 19 and who has not been re-registered or is a foreign lawyer whose registration is suspended.
- (1A) No foreign lawyer shall, in connection with his practice as a foreign lawyer, without the written permission of the Society which may be given for such period and subject to such conditions as the Society thinks fit, employ or remunerate any person who, to his knowledge, was a foreign lawyer whose registration was cancelled other than under section 19 and who has not been re-registered or is a foreign lawyer whose registration is suspended.
- (2) No solicitor or foreign lawyer shall in connection with his practice as a solicitor or foreign lawyer employ or remunerate any person who, to his knowledge, is the subject of an order made by a Solicitors Disciplinary Tribunal under section 10(2)(g) whereby the employment of such person by any solicitor or foreign lawyer is prohibited, while such order is in force.
- (3) No solicitor or foreign lawyer shall, in connection with his practice as a solicitor or foreign lawyer, without written permission of the Society, which may be given for such period and subject to such conditions as the Society may think fit, employ or remunerate any person, who, to his knowledge, has been convicted of a criminal offence involving dishonesty.

- (4) A solicitor or foreign lawyer aggrieved by the refusal of the Society to grant any such permission as aforesaid, or by any conditions attached by the Society to the grant thereof, may appeal to the Chief Judge, in such manner as may be prescribed by the Chief Justice, and on any such appeal the Chief Judge may confirm the refusal or the conditions, as the case may be, or may, in lieu of the Society, grant such permission for such period and subject to such conditions as he thinks fit.
- (5) If any solicitor acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given thereunder, his name shall be struck off the roll or he shall be suspended from practice for such period as a Solicitors Disciplinary Tribunal may think fit.
- (5A) If a foreign lawyer acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given, his registration as a foreign lawyer shall be cancelled or shall be suspended for such period as a Solicitors Disciplinary Tribunal may think fit.
- (6) Any person who, while there is in force in respect of him an order made under section 10(2)(g) prohibiting his employment by any solicitor or foreign lawyer, seeks or accepts any employment by or remuneration from a solicitor or foreign lawyer in connection with his practice as a solicitor or foreign lawyer without previously informing the solicitor or foreign lawyer of that order shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.

54. Penalty on failure to disclose fact of having been struck off, etc.

- (1) Any person who, whilst he is disqualified from practising as a solicitor by reason of the fact that he has been struck off the roll or is suspended from practising as a solicitor, seeks or accepts employment by a solicitor in connection with that solicitor's practice without previously informing him that he is so disqualified shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (1A) A person whose registration as a foreign lawyer has been cancelled other than under section 19 or suspended and who seeks or accepts employment by a solicitor or foreign lawyer without previously informing the solicitor or foreign lawyer that his registration has been cancelled or suspended commits an offence and is liable to a fine of \$500,000.
- (2) No proceedings under this section shall be commenced except by or with the consent of the Secretary for Justice.

55. Time limit for commencement of certain proceedings

Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of any offence against section 46, 47, 48, 50B or 54 may be brought at any time within 2 years next after the commission of the offence or within 6 months after the first discovery thereof by the prosecutor, whichever period expires first.

- (b) The Chief Judge may, in circumstances where it appears to him necessary, require that the motion paper in respect of any person referred to in paragraph (a) shall, in addition to the affidavit referred to in that paragraph, be accompanied by -
 - (i) any other document referred to in subrule (2); or
 - (ii) such other proof as the Chief Judge may consider satisfactory, of the matters evidenced by any document referred to in subrule (2).
- (3A) Every motion paper in respect of a person seeking to be admitted as a barrister under section 27A of the Ordinance shall be accompanied by-
 - (a) a certificate of admission as a barrister or legal practitioner from the appropriate authority in the jurisdiction in which he was admitted, together with evidence that the certificate of admission is currently valid and in force;
 - (b) an affidavit attesting to each of the matters which an applicant must establish as set out in that section;
 - (c) a certificate from the Attorney General stating the period during which the applicant has been employed in the Legal Department of the Government as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87); and
 - (d) an affidavit of identity in accordance with Form 5 in the Schedule completed by an officer of the Court.
- (4) A copy of the motion paper referred to in subrule (1) and of every document accompanying the motion paper in accordance with subrules (2), (3) and (3A) shall be served on the Attorney General and on the Secretary to the Bar Council by the person seeking to be admitted at the time that such motion paper is filed with the Registrar.

9. Admission

- (1) On the date of hearing of the motion under rule 8 or any adjournment thereof by the Court, the Attorney General or Counsel shall move the Court that the person concerned be admitted and enrolled as a barrister.
- (2) The Court, upon hearing the Attorney General or such Counsel and upon hearing any representation which may be made by or on behalf of the Bar Council or of the Attorney General and upon being satisfied that the applicant is eligible for admission as a barrister, may order that the applicant be admitted as a barrister or, if the Court is not so satisfied, may dismiss the application upon such terms as regards costs or otherwise as the Court may deem appropriate.

10. Form of roll of barristers

The roll of barristers shall be in accordance with Form 8 in the Schedule.

PART IV

NOTARIES PUBLIC

11. Registration

- (1) Any person seeking to be registered as a notary public shall produce to the Registrar for registration his notarial faculty and shall file with the Registrar an affidavit of identity in accordance with Form 5 in the Schedule completed by an officer of the Court.
- (2) The Registrar, on payment to him by the applicant of the prescribed fee and upon being satisfied that the applicant is entitled to registration, shall register the applicant as a notary public.

12. Form of register of notaries public

The register of notaries public shall be in accordance with Form 9 in the Schedule.

PART V

GENERAL

13. Exemption

The Chief Judge on special grounds and upon such conditions as he may consider necessary may exempt any person from any of the formalities prescribed by these rules, either absolutely or for any specified period, and may reduce or abridge any of the periods of notice prescribed by these rules upon any such conditions:

Provided that no order shall be made by the Chief Judge under this rule in respect of a person applying to be admitted as a solicitor unless the Society shall have been given such notice thereof and of the date of hearing as the Chief Judge may consider appropriate in the case and shall have been given an opportunity of being heard thereon.

Admission and Registration (Amendment) (No.2) Rules 1994

Transitional

- (1) Subject to subsection (2), where a person seeking admission on the basis of compliance with section 4(1)(a) or (b) of the Ordinance has, before the commencement of these Rules, given notice in accordance with rule 3(1) of the Old Rules, the Old Rules shall continue to apply as if they had not been amended by these Rules.
- (2) A person seeking admission under the Old Rules on the basis of subsection (1) shall file a motion paper in accordance with rule 4 of the Old Rules -
 - (a) if a certificate has not been issued to him in accordance with rule 3(2) or (3) of the Old Rules before the commencement of these Rules, within 2 months after the certificate was issued to him;
 - (b) if a certificate has been issued to him in accordance with rule 3(2) or (3) of the Old Rules before the commencement of these Rules, within 2 months after the certificate was issued to him, or within such further period as the Council may in exceptional circumstances allow,

and if he fails to do so, the certificate shall cease to have effect and the Admission and Registration Rules (Cap. 159 sub. leg.) as amended by these Rules shall apply to him.

- (3) In this section -

"Old Rules" means the Admission and Registration Rules (Cap. 159 sub. leg.) which were in force immediately before the commencement of these Rules.

SCHEDULE

FORMS

FORM 1 [rule 3(1)]

(Repealed)

FORM 1A [rule 3A]

(Repealed)

FORM 1B [rule 3(2)(a)]

ADMISSION AND REGISTRATION RULES

**APPLICATION FOR A CERTIFICATE OF ELIGIBILITY FOR ADMISSION
AS A SOLICITOR ON THE BASIS OF COMPLIANCE
WITH SECTION 4(1)(a) - BARRISTERS**

To: The Law Society of Hong Kong,

I,
[name in English and, if applicable, Chinese]

of

.....
apply for the issue to me of a certificate of eligibility in accordance with rule 3(4) of the Admission and Registration Rules (Cap. 159 sub. leg.).

Telephone contact number

I do solemnly and sincerely declare as follows:

(1) I have resided in Hong Kong for at least 3 months immediately before my admission

OR*

I intend to reside in Hong Kong for at least 3 months immediately after my admission

OR*

I have been ordinarily resident in Hong Kong for at least 7 years

OR*

I have been present in Hong Kong for at least 180 days of each of at least 7 years.
Details of my periods of residence are set out below -

Address	Period of Residence
.....

2A. Admission for particular cases: qualifying period of active practice

Where a person is admitted as a barrister for the purpose of any particular case or cases under section 27 of the Ordinance, the qualifying period of active practice for the purposes of section 31 of the Ordinance shall be a period of not less than 12 months of active practice as a barrister or advocate in any part of the Commonwealth after the date of that person's call to the Bar in England or Northern Ireland or his admission as an advocate in Scotland or, in the case of a person who, prior to his call to the Bar of England or Northern Ireland or admission as an advocate in Scotland, had been admitted as a barrister or advocate in any part of the Commonwealth, after the date of his being so admitted.

2B. General admission on or after 1 June 1986: qualifying period of active practice

Where a person is admitted as a barrister generally under section 27 or 27A of the Ordinance on or after 1 June 1986, the qualifying period of active practice for the purposes of section 31 shall be the period of approved pupillage under these rules.

3. Application for pupillage in Hong Kong

A person desiring to become a pupil in Hong Kong shall-

- (a) give to the Secretary to the Bar Council not less than 3 weeks' notice in writing of his intention to serve a pupillage in Hong Kong, stating whether he wishes to serve his pupillage-
 - (i) with a practising barrister; or
 - (ii) in the Attorney General's Chambers,and if with a practising barrister, stating the name and professional address of that barrister;
- (b) deposit with the Bar Council a certificate from the Registrar of the High Court that the applicant has been admitted as a barrister in Hong Kong and separate certificates of good character from two responsible persons who have known him for one year or more and have had opportunity of judging his character;
- (c) deposit with the Bar Council a written declaration and undertaking that-
 - (i) he is not in practice as a solicitor either on his own account or as a partner or employee in any legal firm whether in Hong Kong or elsewhere and that he does not intend, so long as he remains a pupil, to practise as a solicitor either on his own account or as a partner or employee in any firm in Hong Kong or elsewhere;
 - (ii) he is not enrolled and, so long as he remains a pupil, will not be enrolled as a student, trainee solicitor or member of The Law Society of Hong Kong.

4. Approval of Bar Council

A practising barrister shall not receive a pupil into his chambers unless he has first obtained the approval of the Bar Council to the pupillage.

5. Disqualification

A person shall not be eligible to become a pupil for the purposes of these rules if he-

- (a) is an undischarged bankrupt;
- (b) has been convicted of a criminal offence of such a nature as, in the opinion of the Bar Council, makes his admission as a pupil undesirable;

- (c) is engaged in any occupation which, in the opinion of the Bar Council, is incompatible with pupillage; or
- (d) is for any other reason considered by the Bar Council to be unsuitable as a pupil.

6. Approval of pupillage

The Bar Council shall, if it is satisfied that the applicant has complied with the requirements of rule 3 that he is a fit and suitable person and is not ineligible by virtue of rule 5, and if he wishes to serve his pupillage with a practising barrister, that the practising barrister with whom he wishes to serve his pupillage has obtained the approval of the Bar Council to the pupillage under rule 4, approve him as a pupil.

7. Termination of pupillage

- (1) A pupil who, while serving pupillage, is-
 - (a) adjudicated bankrupt;
 - (b) convicted of a criminal offence; or
 - (c) engaged, employed or enrolled in contravention of his written declaration and undertaking,shall forthwith inform the Bar Council in writing.
- (2) The Bar Council may approve the transfer of pupillage from one practising barrister to another or from a practising barrister to the Attorney General's Chambers or from the Attorney General's Chambers to a practising barrister.
- (3) The Bar Council may order the termination or suspension of a pupillage if it is satisfied that-
 - (a) the pupil has been guilty of misconduct; or
 - (b) the pupil has notified, or failed to notify the Bar Council, of the occurrence of any of the matters referred to in paragraph (1).
- (4) For the purposes of this rule "misconduct" means any conduct which would be regarded as professional misconduct if committed by a practising barrister.

8. Appeals

- (1) Any person who is aggrieved by an order or decision of the Chief Judge or the Bar Council under these rules may, by notice of motion, appeal to the Court of Appeal against the order or decision.
- (2) The notice of motion shall state the grounds of the appeal and shall be served on the Bar Council as Respondents and on the Attorney General.
- (3) At the hearing before the Court of Appeal the applicant, the Bar Council and the Attorney General may be represented by counsel and adduce evidence.
- (4) The Court of Appeal may confirm, vary or quash the order or decision and make such order as to costs as it thinks fit.

9. Requirements of pupillage

- (1) The period of approved pupillage under these rules shall be-
 - (a) a period of not less than 1 year in the chambers of a practising barrister (of not less than 5 years standing as a barrister) in Hong Kong; or
 - (b) a period of not less than 9 months in the Attorney General's Chambers, which may include a period not exceeding 3 months on secondment to the Legal Aid Department, so long as he has also spent a period of not less than 3 months in such service as is described in sub-paragraph (a).
- (2) The period of approved pupillage mentioned in paragraph (1) shall be reduced by any period not exceeding one month spent as a judge's marshal in Hong Kong after the date of admission as a barrister in Hong Kong.
- (3) A person shall not be regarded as having undertaken the period of approved pupillage under these rules unless he has obtained from those of whom he has been a pupil certificates stating he has served his period of pupillage with diligence and that he is a suitable person to practise as a barrister in Hong Kong.
- (4) Any period of work in the nature of pupillage undertaken in the Attorney General's Chambers or in the chambers of a practising barrister (of not less than 5 years standing as a barrister) in Hong Kong after being called to the Bar in England or Northern Ireland, being admitted as an advocate in Scotland or taking all the examinations the passing of which qualifies a person for admission as a barrister in Hong Kong may at the discretion of the Bar Council be accepted, if he is so called or admitted or if he passes those examinations, as a period of approved pupillage, or part thereof, as required by these rules.

10. Reduction of pupillage

The Chief Judge may, after consulting the Bar Council, reduce the period of approved pupillage mentioned in rule 9 where he is satisfied that a barrister admitted under section 27 of the Ordinance has substantial experience in advocacy in court:

Provided that the period of pupillage required to be served shall not be less than 3 months.

11. (Repealed)

12. Reduction of pupillage of a barrister admitted under section 27A

- (1) The Chief Judge may, after consulting the Bar Council and the Attorney General, reduce or dispense with the period of approved pupillage mentioned in rule 9 where he is satisfied that a barrister admitted under section 27A of the Ordinance has substantial experience in advocacy in court.
- (2) The Chief Judge may make the reduction or dispensation of the period of approved pupillage subject to conditions that he may specify.

PART I

INTERPRETATION

1. (Repealed)

2. Interpretation

In these rules, unless the context otherwise requires-

"affidavit" includes affirmation;

"clerk" means the clerk to the Solicitors Disciplinary Tribunal or any deputy or person appointed by the Solicitors Disciplinary Tribunal temporarily to perform the duties of that office;

"respondent" means any solicitor, trainee solicitor, employee of a solicitor, foreign lawyer or employee of a foreign lawyer against whom an application is made pursuant to rule 3;

"Secretary General" means the Secretary General of the Society.

PART II

APPLICATIONS AGAINST SOLICITORS, SOLICITORS' EMPLOYEES AND TRAINEE SOLICITORS

3. Applications to Society to consider complaints

- (1) An application to consider a complaint regarding the conduct of a respondent shall be in writing and signed by the applicant in Form 1 in the Schedule and shall be sent to the Society together with an affidavit by the applicant in Form 2 stating the matters of fact on which he relies in support of his application.
- (2) Where the application is made by the Society the application may be signed and the affidavit sworn on behalf of the Society by the Secretary General or by such other person as may from time to time be appointed by the Council.

4. Transmission of documents

If the Council or the Chief Judge decides to submit a matter under section 9A of the Ordinance to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel appointed pursuant to section 9(4) of the Ordinance, the Council shall transmit to the Tribunal Convenor all documents received by the Society pursuant to rule 3(1) or any application and affidavit signed and sworn pursuant to rule 3(2).

5. Further information

The Solicitors Disciplinary Tribunal may at any time require the applicant or the Council to supply such further information and documents in his or its possession or under his or its control relating to the application as they think fit.

6. Dismissal without answer by respondent

- (1) If upon consideration of any such documents transmitted to the Solicitors Disciplinary Tribunal under rule 4, the Solicitors Disciplinary Tribunal is of the opinion that no *prima facie* case is shown for any disciplinary action, the Solicitors Disciplinary Tribunal may dismiss the application without requiring the respondent to answer the allegations, and without hearing the applicant.
- (2) If required so to do either by the applicant, the Society or the respondent, the Solicitors Disciplinary Tribunal shall make a formal order dismissing such application and, the clerk shall file the order pursuant to section 10(3) and section 12(2) of the Ordinance.

7. Parties

In the case of an application under rule 3(1), the applicant and the respondent shall be parties, and in the case of an application under rule 3(2), the Society and the respondent shall be parties.

27. Barristers Disciplinary Tribunal Proceedings Rules

ARRANGEMENT OF RULES

Rule

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PART I

PRELIMINARY

1. Interpretation

In these Rules, unless the context otherwise requires –

“applicant” (申請人) means the Bar Council or, in the event of a submission under section 35(2) of the Ordinance, such person as may be appointed by the Chief Judge under section 2;

“inquiry” (研訊) means an inquiry under section 35A of the Ordinance;

“respondent” (答辯人) means a barrister whose conduct is the subject of an inquiry;

“Tribunal” (審裁組) means a Barristers Disciplinary Tribunal constituted under section 35A of the Ordinance;

“Tribunal Convenor” (審裁組召集人) means the Tribunal Convenor appointed under section 34 of the Ordinance.

PART II

PROCEEDINGS ON AN INQUIRY UNDER SECTION 35A OF THE ORDINANCE

2. Appointment of applicant by the Chief Judge

Where the Chief Judge submits a matter to the Tribunal Convenor under section 35(2) of the Ordinance he shall appoint a person to be the applicant for the purpose of the inquiry, and shall inform the Tribunal Convenor of the name and address of that person.

3. Parties to be notified of proceedings

- (1) Within 7 days after the appointment of persons under section 35A(1) of the Ordinance, the Tribunal Convenor must, by notice in writing, inform the applicant and the respondent that a Tribunal has been constituted to inquire into the respondent's conduct.
- (2) As soon as practicable after the constitution of a Tribunal, the chairman of the Tribunal must, by notice in writing, inform the applicant and the respondent of –
 - (a) the date, time and place of the first hearing of the inquiry; and
 - (b) the names of the members of the Tribunal.
- (3) the chairman of the Tribunal must also, by notice in writing, inform the applicant and the respondent of the date, time and place of each subsequent hearing of the inquiry.

4. Applicant to serve particulars and other documents

An applicant shall, within 7 days after receipt of notification under section 3(1), serve –

- (a) on the respondent, by sending to him by prepaid registered post at his chambers' address or such other address as may be directed by the Tribunal –
 - (i) a document setting out particulars of the misconduct alleged against him in the matter as submitted to the Tribunal Convenor; and
 - (ii) in the case of a submission under section 35(1) of the Ordinance following a complaint to the Bar Council, a statement of the complainant if the same be available; and
 - (iii) statements in the possession of the applicant from any witness, in so far as the same are relevant; and
 - (iv) copies of documents in the possession of the applicant, in so far as the same are relevant; and
 - (v) (Repealed)
- (b) on the complainant, by sending to him by ordinary post at his residential or business address, the like documents as set out in paragraph (a)(i), and such other documents as the applicant thinks fit; and
- (c) on the chairman of the Tribunal, by sending to him by ordinary post, the like documents as set out in paragraph (a).

5. Respondent to admit or dispute particulars

A respondent shall, within 14 days from the date of despatch of the documents by the applicant to him in accordance with section 4(a), inform in writing the chairman of the Tribunal and the applicant –

- (a) whether he admits or disputes the misconduct alleged against him as set out in the document referred to in section 4(a)(i); and
- (b) if he admits the misconduct alleged against him, whether he wishes to call any evidence in mitigation.

6. Orders or directions by Tribunal

A Tribunal may give such orders or directions for the conduct of an inquiry, including orders or directions for amendment of the misconduct alleged against the respondent, as it thinks fit.

7. Burden of proof

In an inquiry before a Tribunal, the burden of proof shall be upon the applicant.

8. Procedure and rules of evidence

A Tribunal may determine its own procedure and rules of evidence.

9. Record of proceedings

A Tribunal shall make such provisions as may be necessary for the taking of an official record of the proceedings and may, if no shorthand writer is available, appoint one of its members or any other person to take a note of the proceedings whose notes shall be the official record of the inquiry.

10. Failure of party to appear at hearing

If any party fails to appear at a hearing, the Tribunal may, upon proof of service on such party of the notice of hearing, proceed with the inquiry in his absence and may, in the case of absence of the applicant, dismiss the allegation of misconduct against the respondent.

11. Appearance by solicitor or counsel

The parties may appear at an inquiry by solicitor or counsel.

12. Tribunal to inform parties of order

The Tribunal shall inform the parties in writing of its order.

13. Application for re-hearing

- (1) Any party who has failed to appear at a hearing may, within 21 days from the making of an order by the Tribunal under section 37 of the Ordinance, and upon giving notice to the Tribunal and to the other party, apply to the Tribunal for a re-hearing.
- (2) The Tribunal may grant such application for a re-hearing upon such terms as to costs or otherwise as it thinks fit.
- (3) Upon any re-hearing, the Tribunal may amend, vary, add to, or reverse its findings or order pronounced at the previous hearing.

14. Disposal of exhibits etc.

Unless the Tribunal otherwise orders, all documents and exhibits produced, used or made in connection with any proceedings under these Rules and the official record shall be retained by the Tribunal until the time for an application for a re-hearing under section 13 or the time for an appeal under section 37B of the Ordinance has expired and if at the expiration of such time no application or appeal has been lodged, such documents, exhibits and record shall, unless the Tribunal otherwise orders, be transmitted to and retained by the Bar Council for not less than 3 years.

15. Disposal of exhibits etc. following appeal

- (1) Where an appeal is lodged under section 37B of the Ordinance, the Tribunal shall cause the documents, exhibits and record to be transmitted to the clerk of the Court.
- (2) At the conclusion of an appeal, unless the Court of Appeal otherwise orders, such documents, exhibits and record shall be transmitted to and retained by the Bar Council for not less than 3 years.

PART III

PROCEEDINGS IN RELATION TO
VARIATION OF SUSPENSION OR STRIKING OFF ORDER

16. Constitution of Tribunal on application for variation

Where an application made by a barrister under section 38 of the Ordinance is received by the Tribunal Convenor, section 35A of the Ordinance shall apply as it applies in the case of a submission to the Tribunal Convenor under section 35 of the Ordinance.

17. Tribunal to inform parties

A Barristers Disciplinary Tribunal constituted for the purposes of section 38 of the Ordinance shall –

- (a) inform the barrister and the Bar Council of the identity of the Chairman and its members;
- (b) fix a date and time of its hearing and give the barrister and the Bar Council not less than 14 days' notice of the same.

18. Application of sections 6, 8 and 9

Sections 6, 8 and 9 shall apply to a Barristers Disciplinary Tribunal constituted under section 38 of the Ordinance as they apply to a Tribunal constituted under section 35A of the Ordinance.

PART IV
TRANSITIONAL

19. Application to pending complaints

These Rules shall apply regardless of whether the misconduct in question is alleged to have taken place, or a complaint in respect of the alleged misconduct was made, prior to the coming into force of these Rules.

THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT VOLUME 2

THE LAW SOCIETY OF HONG KONG

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