

**5. Splitting**

Where a solicitor holds or receives a cheque or draft which includes client's money or trust money of one or more trusts-

- (a) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or
- (b) if he does not split the cheque or draft, he shall, if any part thereof consists of client's money, and may, in any other case, pay the cheque or draft into a client account.

**6. Restriction on payment into client account**

No money other than money which under rules 3, 4 and 5 a solicitor is required or permitted to pay into a client account shall be paid into a client account.

**7. Drawings from a client account**

There may be drawn from a client account-

- (a) in the case of client's money-
  - (i) money properly required for a payment to or on behalf of the client;
  - (ii) money properly required for or towards payment of a debt due to the solicitor from the client or in reimbursement of money expended by the solicitor on behalf of the client;
  - (iii) money drawn on the client's authority; and
  - (iv) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs;
- (b) in the case of trust money, including money held by the solicitor as solicitor-trustee-
  - (i) money properly required for a payment in the execution of the particular trust; and
  - (ii) money to be transferred to a separate bank account kept solely for the money of the particular trust;
- (c) such money, not being money to which either paragraph (a) or (b) applies, as may have been paid into the account under rule 4(b) or (d); and
- (d) money which may by mistake or accident have been paid into the account in contravention of rule 6:

Provided that in any case under paragraph (a) or (b) the money so drawn shall not exceed the total of the money held for the time being in such account on account of such client or trust.

**7A. Authority required for drawing money from client account**

- (1) No money shall be drawn from a client account under rule 7 unless one of the following persons has specifically authorized in writing its withdrawal, namely -
  - (a) the solicitor in whose name the client account is kept or, where the client account is kept in the name of a firm, any solicitor, partner, consultant or foreign lawyer in the firm;
  - (b) a certified public accountant as defined in the Professional Accountants Ordinance (Cap. 50); or
  - (c) a person approved by the Council, which approval shall only be given in exceptional circumstances, upon an application in writing made to it by the solicitor or firm and subject to such conditions as the Council may think fit, if any.
- (2) Paragraph (1) shall not apply to the transfer of money from one client account to another client account at the same bank.

**8. Further restrictions on drawings from client account**

- (1) No money drawn from a client account under rule 7(a)(ii) or (iv), (c) or (d) shall be drawn except by-
  - (a) a cheque drawn in favour of the solicitor; or
  - (b) a transfer to a bank account in the name of the solicitor not being a client account.
- (2) No money other than money permitted by rule 7 to be drawn from a client account shall be so drawn unless the Council, upon an application in writing made to it by the solicitor, specifically authorizes in writing its withdrawal.

**9. Exceptions**

- (1) Notwithstanding the provisions of these rules, a solicitor shall not be under obligation to pay into a client account client's money held or received by him which-
  - (a) is received by him in the form of cash and is without delay paid in cash in the ordinary course of business to the client or to a third party; or
  - (b) is received by him in the form of a cheque or draft which is endorsed over in the ordinary course of business to the client or to a third party and is not passed by the solicitor through a bank account; or
  - (c) he pays into a separate bank account opened or to be opened in the name of the client or of some person named by the client.
- (2) Notwithstanding the provisions of these rules, a solicitor shall not pay into a client account client's money held or received by him which-
  - (a) the client for his own convenience requests the solicitor to withhold from such account; or
  - (b) is received by him for or towards payment of a debt due to the solicitor from the client or in reimbursement of money expended by the solicitor on behalf of the client; or

- (c) is paid to him expressly on account of costs incurred, in respect of which a bill of costs or other written intimation of the amount of the costs has been delivered, or as an agreed fee, or on account of an agreed fee, for business undertaken or to be undertaken.
- (3) Where a cheque or draft includes other client's money as well as client's money of the nature described in paragraph (2), such cheque or draft shall be dealt with in accordance with rule 5.
- (4) Notwithstanding the provisions of these rules, the Council, upon an application in writing made to it by a solicitor, may specifically authorize the solicitor in writing to withhold any client's money from a client account.

#### **9A. Duty to remedy breaches**

- (1) Any breach of these rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.
- (2) Each principal of a firm shall be jointly and severally liable to carry out the duty to remedy any breach of these rules. This duty extends to replacing missing client's money or trust money from the principal's own resources, even if the money has not been misappropriated by the principal himself, and whether or not a claim is subsequently made on the fund established under rule 3 of the Solicitors (Professional Indemnity) Rules (Cap.159 sub.leg.).
- (3) In this rule -
  - "firm" (律師行) means a sole practitioner or a partnership of 2 or more solicitors, carrying on the business of practising as a solicitor;
  - "principal" (主管) means a sole practitioner or partner of a firm;
  - "solicitor" (律師) means a solicitor of the Court.

#### **10. Obligation to keep accounts**

- (1) Every solicitor shall at all times keep properly written up such books and accounts as may be necessary-
  - (a) to show all his dealings with-
    - (i) clients' money held, received or paid by him; and
    - (ii) any other money dealt with by him through a client account; and
  - (b) to distinguish such money held, received or paid by him on account of each separate client and to distinguish such money from other money held, received or paid by him on any other account.
- (2) All dealings referred to in paragraph (1)(a) shall, within 3 working days after the date of such dealings, be recorded in-
  - (a) a clients' cash book, or a clients' column on the credit side or debit side, as may be appropriate, of a cash book; and
  - (b) a clients' ledger, or a clients' column on the credit side or debit side, as may be appropriate, of a ledger,

and no other dealings shall be recorded in such clients' cash book and ledger, or, as the case may be, in such clients' columns.

- (3) All dealings of the solicitor relating to his practice as a solicitor other than those referred to in paragraph (1)(a) shall, before the end of the month following the month in which the dealings were carried out, be recorded in a separate cash book and ledger or in separate columns of a cash book and ledger.
- (4) In addition to the books and accounts referred to in paragraphs (2) and (3), every solicitor shall keep a record of all bills of costs, distinguishing between profit costs and disbursements, and of all written intimations under rule 7(a)(iv) delivered by the solicitor to his clients, which record shall be contained in a bills delivered book or a file of copies of such bills and intimations.
- (5) In this rule each of the expressions "book", "ledger" and "record" shall be deemed to include a loose-leaf book and such cards or other permanent documents as are necessary for the operation of a mechanical system of book-keeping.
- (6) Every solicitor shall preserve for at least 6 years from the date of the last entry therein all books, accounts and records kept by him under this rule.
- (6A) Subject to paragraph (8), the books and accounts, ledgers and records kept by a solicitor under this rule must be kept in Hong Kong.
- (7) Notwithstanding paragraph (1), the Council may specifically exempt a solicitor from such of the provisions of this rule as relate to clients' money, upon receipt by it of an application for such exemption, made in writing and containing an undertaking not to carry out any dealings with clients' money.
- (8) Notwithstanding paragraph (6A), the Council may specifically exempt a foreign lawyer from that paragraph upon such conditions as it thinks fit.

#### **10A. Reconciliations**

A solicitor who holds or receives clients' money or pays money into client accounts must -

- (a) at least once a calendar month compare the balance shown on clients' cash book with the total of -
  - (i) the balances shown on the statements and passbooks (after allowing for all unrepresented items) of all client accounts and of any account which is not a client account but in which the solicitor holds client's money under rule 9(2)(a); and
  - (ii) any client's money or trust money held by the solicitor in cash; and
- (b) as at the same date when he makes a comparison pursuant to paragraph (a) -
  - (i) prepare a listing of all the balances shown by the clients' ledgers of the liabilities to clients (and other persons, and trusts), and compare the total of those balances with the balance shown on the clients' cash book; and
  - (ii) prepare a reconciliation statement, which must show the cause of the difference, if any, shown by each of the comparisons referred to in subparagraph (i) and paragraph (a).

**11. Powers of Council**

- (1) In order to ascertain whether the provisions of these rules have been complied with, the Council, acting either-
  - (a) on its own motion; or
  - (b) on a written complaint lodged with it by a third party,may require any solicitor to produce at such time and place as may be fixed by the Council, his books of account, bank pass books, loose-leaf bank statements, statements of account, vouchers and any other necessary documents for the inspection of any person appointed by the Council, and such person shall be directed to prepare for the information of the Council a report on the result of such inspection and any such report may be used as a basis for proceedings under the Ordinance.
- (2) Upon being required so to do a solicitor shall produce such books of account, bank pass books, loose-leaf bank statements, statements of account, vouchers and documents at the time and place fixed.
- (3) Before instituting an inspection on a written complaint lodged with it by a third party, the Council shall require *prima facie* evidence that a ground of complaint exists, and may require the payment by such party to the Council of a reasonable sum to be fixed by it to cover the costs of the inspection, and the costs of the solicitor against whom the complaint is made and the Council may deal with any sum so paid in such manner as it thinks fit.
- (4) The Council may make such order for the payment of the costs of any inspection required by the Council under this rule as it thinks fit.

**12. Delivery of intimation and notification**

A written intimation of the amount of a solicitor's costs incurred and a notification to a client that money held for him will be applied as mentioned in rule 7(a)(iv) may be delivered to a client in the same manner as a bill of costs is required to be delivered under section 66(2) of the Ordinance.

**13. Requirement by Council**

Every requirement to be made by the Council of a solicitor under these rules shall be made in writing under the hand of the Secretary and sent by registered post to the last address of the solicitor notified to the Society and, when so made and sent, shall be deemed to have been received by the solicitor within 48 hours of the time of posting.

**14. Saving of rights of solicitor**

Nothing in these rules shall deprive a solicitor of any recourse or right, whether by way of lien, set-off, counter-claim, charge or otherwise, against moneys standing to the credit of a client account.