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## 2. Accountant's Report Rules

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### ARRANGEMENT OF RULES

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**1. Commencement**

These Rules shall come into operation on 1 January 1996.

**2. Interpretation**

In these rules, unless the context otherwise requires -

"client" means any person on whose account a solicitor or a firm holds or receives client's money;

"client account" means a current or deposit account at a bank in the name of the solicitor or a firm in the title of which the word "client" appears;

"client's money" means money held or received by a solicitor or his firm on account of a person for whom he or his firm is acting in relation to the holding or receipt of such money either as a solicitor or, in connection with his practice as a solicitor, as agent, bailee, stakeholder, solicitor-trustee or in any other capacity, but not money to which the only person entitled is the solicitor himself or, in the case of a firm, one or more of the partners in the firm:

Provided that the expression "client's money" shall not extend to money held or received by a solicitor holding an office to which section 75(a) of the Ordinance applies, in the course of his employment in such office, or to money paid without delay into an account subject to public or official audit;

"firm" means a sole practitioner or a partnership of 2 or more solicitors, carrying on the business of practising as a solicitor;

"practice year" means a period of 12 months ending on 31 October each year;

"principal" means a sole practitioner or partner of a firm;

"solicitor-trustee" means a solicitor who is a sole trustee or who is co-trustee only with a partner, clerk or servant of his or with more than one of such persons; and

"trust money" means money held or received by a solicitor or a firm which is not client's money and which is subject to a trust of which the solicitor or his firm is a trustee, whether or not he is solicitor-trustee of such trust.

**3. Qualifications of accountant**

(1) An accountant shall be qualified to give an accountant's report on behalf of a firm, in accordance with the provisions of section 8 of the Ordinance if-

- (a) he is a certified public accountant (practising) as defined in the Professional Accountants Ordinance;
- (b) he has neither been at any time during the accounting period, nor subsequently, before giving the report, become a partner, clerk or servant of such firm or of any partner of such firm; and
- (c) he is not subject to notice of disqualification under paragraph (2).

(2) If either-

- (a) the accountant has been found guilty by the Disciplinary Committee appointed under section 33 of the Professional Accountants Ordinance of professional misconduct or dishonourable conduct; or

**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 (practising) 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

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# 19. Solicitors (Professional Indemnity) Rules

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## ARRANGEMENT OF RULES

### Rule

1. Citation and commencement
2. Interpretation
3. The fund
4. Establishment and maintenance of the fund
5. Management and administration of the fund
6. Compulsory Indemnity
7. Exemption
8. Production of documents and information
- 8A. Investigatory powers
9. Receipt
10. Entitlement to Indemnity
11. Provision of Indemnity
12. Indemnity exclusively from the fund
13. Disputes
14. Continued maintenance and release of the fund
15. Failure to make payment
16. Payment of amounts not covered by the scheme
17. Panel of firms of solicitors
18. Reporting
19. The Council

- Schedule 1. Contributions to fund  
Schedule 2. Management and administration of fund  
Schedule 3. Exclusions and conditions

**1. Citation**

These rules may be cited as the Solicitors (Professional Indemnity) Rules.

**2. Interpretation**

In these rules, unless the context otherwise requires-

"authorized insurers" means persons carrying on liability insurance business or pecuniary loss insurance business and recognized as such by the Society;

"authorized reduction amount" means the amount of the reduction in the total amount of contribution authorized from time to time by the Council referred to in paragraph 2(7)(a) of Schedule 1;

"basic contribution" means the amount which is established by applying the formula set out in paragraph 2(1)(a)(i) of Schedule 1 (and which is represented by the letter "C" in such formula) as varied by paragraph 2(2), (3) or (7) of Schedule 1;

"certified public accountant (practising)" has the same meaning as in the Professional Accountants Ordinance (Cap. 50);

"Claims Committee" means the committee appointed by the Council or the Company with power to settle, prosecute or defend claims made under these rules or the former Rules;

"Company" means Hong Kong Solicitors Indemnity Fund Limited;

"contribution" means the contribution referred to in rule 4;

"firm" means the firm as from time to time constituted, whether of a sole practitioner or a partnership, carrying on the Practice;

"first indemnity period" means the period commencing on 1 October 1989 and expiring on 30 September 1990, both days inclusive;

"first Master Policies" means the 2 professional indemnity insurance policies entered into between the Society and authorized insurers effective on 1 October 1986;

"former Master Policy" means the master policy entered into between the Society and authorized insurers, expiring on 30 September 1986;

"former Practice", for the purposes of Schedule 1, means a Practice which no longer carries on business practising as a solicitor;

"former principal", for the purposes of Schedule 1, means a principal in a Practice on the date when such Practice becomes a former Practice;

"former Rules" means the Solicitors (Professional Indemnity) (Amendment) Rules 1986 and the Solicitors (Professional Indemnity) Rules 1987;

"former solicitor" means a person who has ceased by reason of death, retirement or otherwise to be a solicitor in Practice and who has been provided with Indemnity or insured under any Master Policy or former Master Policy or whose successors in business have been provided with Indemnity or insured under any Master Policy or former Master Policy including the estate and legal representatives of such person;

"fund" means the fund referred to in rule 3;

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## 24. PRACTICE DIRECTIONS 1990

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### PREFACE

Under article 18(h) of the Articles of Association of the Society the Council is empowered to issue Practice Directions relating to the professional practice, conduct and discipline of solicitors. Article 6 provides that every solicitor shall be absolutely bound by all Practice Directions issued from time to time by the Society.

The Council has issued a number of Practice Directions. Some of the Directions are advisory only but some are mandatory, breach of which will be treated as professional misconduct in respect of which disciplinary action may be taken.

These Practice Directions replace all previous Directions made by the Council. They have been edited but there are no new Directions and no amendments of substance.

In a number of Directions reference is made to particular sums of money. These have been reviewed and some have been revised and are effective from the date of publication of this document.

Practice Directions which dealt with publicity have been repealed and a new Solicitors' Practice Promotion Code is published separately.

The date on which the original Direction came into effect is referred to in those Directions where it may be important to the obligations of solicitors before and after a particular date. Otherwise reference can be made to the table at Appendix 1.

January 1990

Note: These consolidated Practice Directions were first issued on 8 January 1990.

This revised print is current as at 8 September 2004

**A. CONVEYANCING**

1. [Repealed]
2. Sale of flats in uncompleted developments by way of grant or sale of sub-leases
3. Solicitors' Accounts Rules
4. Rule 5C of the Solicitors' Practice Rules - sale of flats in uncompleted developments
5. Management of buildings - deeds of mutual covenant
6. [Repealed]
7. Sale and purchase of partitioned residential flats
8. Certified copies of title deeds
9. Rule 5C(1) of the Solicitors' Practice Rules
- 9A. Rule 5C(1) of the Solicitors' Practice Rules - Home Ownership Scheme and Private Sector Participation Scheme Conveyancing Transactions
- 9B. Rule 5C(1) of the Solicitors' Practice Rules - Financial Secretary Incorporated Lease Extension Cases
10. Rule 5C(1) of the Solicitors' Practice Rules
11. Rule 5C(1) of the Solicitors' Practice Rules
12. Rule 5C of the Solicitors' Practice Rules  
Approved Forms A1 and A2 (for Consent Scheme)  
Approved Forms B1 and B2 (for non-Consent Scheme)

**B. COSTS**

1. Solicitors' bills of costs
2. Solicitors (General) Costs Rules - equitable mortgage and legal charge
3. Solicitors (General) Costs Rules - assignment between subsidiary / associate companies

**C. CRIMINAL CASES**

1. [Repealed]
2. [Repealed]
3. Steps to be taken in criminal matters
4. Video evidence of children



- (i) if the accused is in custody, only in the prison or other custodial institution where he is being held, in the presence of the solicitor and/or the barrister;
  - (ii) if the accused is on bail, at the solicitor's office or in counsel's chambers or elsewhere in the presence of the solicitor and/or his barrister.
- (e) The solicitor must ensure that the barrister returns the recording to him as soon as practicable after the conclusion of the barrister's role in the case. A written record of the date and time of despatch and to whom the recording was delivered must be made.
- (2) This Practice Direction came into effect on 3 March 1997.

## **D. PRACTICE SUPERVISION**

### **1. SOLICITORS' EMPLOYEES QUALIFIED FOR ADMISSION IN HONG KONG**

Any solicitor who employs a person, who is qualified for admission as a solicitor, must ensure that his employee applies to be admitted as a solicitor in Hong Kong within a reasonable time after the person is employed or becomes so qualified.

### **2. SIGNATURE OF POST**

- (1) All letters from a firm of solicitors, including from any individual, in the course of the professional practice of the firm must be signed, whether in the name of the firm or of the individual, by a person who is an approved signatory for the purposes of this Practice Direction.
- (2) The phrase "in the course of the professional practice" does not mean the same as "in the course of the business". For example, letters written on behalf of the firm to its landlords, its bankers, its stationery suppliers or its insurers would not be required to be signed by an approved signatory. On the other hand, the category of letters in the course of the professional practice of the firm will include (but not be limited to) all letters written to clients in their capacity as such, all letters to other lawyers regarding clients' affairs and all letters written on behalf of clients to third parties.
- (3) An approved signatory for these purposes is:-
  - (a) any solicitor who is qualified to act as a solicitor in accordance with section 7 of the Legal Practitioners Ordinance who is a sole practitioner or partner in, or an employee of, or a consultant to, the firm;
  - (b) any lawyer qualified in his own jurisdiction who has satisfied the requirements of section 4 or 5 of the Overseas Lawyers (Qualification for Admission) Rules and has satisfied the requirements as to residence and who is authorised by the firm to sign;
  - (c) any of the following who is an employee of the firm, in relation to matters within such person's competence in each case but not otherwise:
    - (i) a foreign lawyer;
    - (ii) a Chartered Accountant or Certified Public Accountant (practising) whose qualification has satisfied the membership admission requirements of the Hong Kong Society of Accountants;
    - (iii) a member of the United Kingdom Institute of Trademark Agents or the Hong Kong Institute of Trademark Practitioners;
    - (iv) a United Kingdom Chartered Patent Agent who has entered on the United Kingdom register of Patent Agents under the provisions of the Register of Patent Agents Rules 1982 administered under the United Kingdom Patents Act 1977;

- (ii) Chartered Accountant or Certified Public Accountant (practising) whose qualification has satisfied the membership admission requirements of the Hong Kong Society of Accountants;
  - (iii) a member of the United Kingdom Institute of Trademark Agents or the Hong Kong Institute of Trademark Practitioners;
  - (iv) a United Kingdom Chartered Patent Agent who has entered on the United Kingdom register of Patent Agents under the provisions of the Register of Patent Agents Rules 1982 administered under the United Kingdom Patents Act 1977;
  - (v) a fellow of the Institute of Chartered Secretaries and Administrators or the Hong Kong Institute of Company Secretaries;
  - (vi) a person of comparable qualification and/or experience approved by the Council on application to it, subject to such conditions as the Council may think fit.
- (3) Where a person is approved to issue such electronic communications by virtue only of (2)(b) or (c) above:
- (a) that persons authority shall be in writing signed by the sole practitioner or a partner in the firm for the time being;
  - (b) the sole practitioner or, as the case may be, all partners of the firm or a partner designated in writing for that purpose shall be responsible for ensuring that the person:
    - (i) does not exceed his/her authority; and
    - (ii) complies with all relevant professional requirements; and
  - (c) the name of the approved person must appear at the end of the communication together with that person's status within the firm.
- (4) This Practice Direction is without prejudice to other Practice Directions, in particular Practice Direction D.2.
- (5) This Practice Direction came into effect on 1 January 1998 and was amended on 5 January 2004.

## 9. BANKRUPTCY

- (1) A solicitor shall notify the Society in writing within 7 days:
  - (a) after he has filed a bankruptcy petition against himself with the Registry of the High Court; or
  - (b) after he has been served with a sealed copy of a bankruptcy petition by his creditor.
- (2) A solicitor shall notify the Society in writing within 7 days after the date of a bankruptcy order against him.
- (3) This Practice Direction came into effect on 24 November 2003.

## **E. TRAINEE SOLICITORS AND ADMISSION**

1. [Repealed]

### **2. TRAINEE SOLICITOR CONTRACTS - APPROVED FORMS**

- (1) Pursuant to rule 8 of the Trainee Solicitors Rules the following forms of trainee solicitor contract have been adopted:
  - (a) form A (appendix 2) applies to trainee solicitors employed by solicitors in private practice;
  - (b) form B (appendix 3) applies to trainee solicitors working for the Government; and
  - (c) form C (appendix 4) applies to trainee solicitors employed in commerce and industry.

These forms must be used in all cases.

- (2) A trainee solicitor contract in form A, that is the form applicable to trainee solicitors employed by solicitors in private practice, must provide for a salary of not less than \$6,000 per month for the first year of the contract and \$7,500 for the second year.
- (3) Trainee solicitor contracts which do not provide for salaries of at least these amounts will not be accepted for registration.

### **3. TRAINEE SOLICITORS - ABSENCES FROM THE OFFICE**

[Replaced by rule 9(2) of the Trainee Solicitors Rules which came into effect on 18 March 1994.]

This Practice Direction came into effect on 4th December 1989.