

**5. Management and administration of the fund**

The fund shall be held, managed and administered in accordance with the provisions of Schedule 2 by the Company.

**6. Compulsory Indemnity**

- (1) Subject to rule 7, every solicitor who is, or is held out to the public as, a solicitor in Practice in Hong Kong shall be required to have and maintain Indemnity.
- (2) Any current practising certificate which has been issued to a solicitor who is required to have and maintain Indemnity and who fails to have Indemnity shall be suspended and such person shall not be qualified to act as a solicitor pursuant to section 7 of the Ordinance while he shall fail to have Indemnity.

**7. Exemption**

- (1) Rule 6 shall not apply to a solicitor or a class of solicitors for the time being exempted by the Council from compliance with these rules or to a solicitor or a class of solicitors engaged only in a category or categories of professional business specified by the Council.
- (2) The Council may-
  - (a) exempt from compliance with these rules any solicitor or any class of solicitors specified by the Council;
  - (b) exempt from compliance with these rules any solicitor or any class of solicitors engaged only in a category or categories of professional business specified by the Council;
  - (c) grant such exemption either indefinitely or for a specified period or subject to such other conditions as the Council may from time to time determine; and
  - (d) revoke any exemption granted.

**8. Production of documents and information**

- (1) Subject to subrule (3) every principal who is in Practice in Hong Kong shall, on or before 15 August in each indemnity period or such other date as may be allowed by the Council, produce to the Company or to a person specified by the Company-
  - (a)
    - (i) a certificate signed by a certified public accountant (practising) containing particulars of the gross fee income in accordance with this rule attributable to the Practice for the immediately preceding accounting year of the Practice; or
    - (ii) if a certificate mentioned in subparagraph (i) is not available, subject to the approval of the Council and terms, if any, the Council thinks fit, a certificate signed by a certified public accountant (practising) containing particulars of the gross fee income attributable to the Practice for the accounting year of the Practice ending not earlier than 31 March in the preceding year; and
  - (b) such other information in connection with the Practice made up to 31 July (or other date as determined by the Council) in the same indemnity period required by the Company in a form approved by the Company for the purpose of assessing the contributions payable by that Practice, including the following:
    - (i) (in addition to the certificate referred to in paragraph (a))

- particulars of the gross fee income attributable to the Practice for the immediately preceding accounting year of the Practice;
- (ii) the names of all the principals in the Practice;
  - (iii) the names of all foreign lawyers in the Practice;
  - (iv) the names of all other solicitors, including assistant solicitors and consultants employed in or otherwise involved in the Practice;
  - (v) the names of all trainee solicitors in the Practice; and
  - (vi) the name and address of the firm carrying on the Practice.
- (2) Production with the approval of the Council of a certified public accountant (practising)'s certificate of gross fee income for a period other than the immediately preceding accounting year of the Practice, in accordance with subrule (1)(a), shall not relieve any principal in that Practice of his obligation to produce to the Company a certificate in respect of the immediately preceding accounting year of the Practice and such certificate, when available, shall be produced immediately on demand by the Society or the Company.
- (3) If a principal in a Practice supplies particulars of the gross fee income of the Practice and the other information in connection with the Practice in accordance with subrule (1) or (2), the other principals in the same Practice shall not in addition be required to supply such particulars or information.
- (4) Subject to subrule (3), if any principal referred to in subrule (1) fails to show reasonable cause for not supplying particulars of the gross fee income of the Practice or the other information in connection with the Practice, in accordance with subrule (1) or (2) within 30 days of the receipt of notice from the Society requesting him to show reasonable cause for not supplying the particulars or the other information:
- (a) such failure shall be an event of professional misconduct on the part of such principal and the other principal or principals in such Practice as at the date of such failure; and
  - (b) without prejudice to any other power or remedy of the Society, the Council may apply to the Court for an order compelling such principal or each of the other principals in the Practice to disclose such particulars and information.

#### **8A. Investigatory powers**

- (1) In order to ascertain whether full and accurate information has been provided in accordance with these rules and to obtain the information that has not been provided, the Company may appoint a person ("the appointed person") whom it thinks fit.

the date of such change) occurring since the date of the previous return.

- (iv) Upon receipt by the Company of the certificate of gross fee income and information pursuant to rule 8(1) to enable the Company to assess the contribution for the next period of indemnity, the Company will also, based on such information and the other information referred to in sub-subparagraph (b)(iii), calculate and adjust the contribution for the preceding indemnity period in accordance with the formula for calculating the contribution for such preceding indemnity period. Any difference in the amount of the assessed contribution paid for the preceding indemnity period and the contribution established by such calculation shall be met by a further payment by the firm, or in the event of the firm being dissolved prior to payment, by the principals of the firm immediately prior to such dissolution to the Company, or, notwithstanding paragraph 4, by a refund to the firm or such principals by the Company, as the case may be.
- (c) If any principal who is required to make contributions in accordance with paragraph 1 fails to provide the Company with a certified public accountant (practising)'s certificate of the gross fee income or other information referred to in sub-subparagraph (b)(iii) pursuant to rule 8(1), then such principal and the other principal or principals, if any, in the Practice shall be jointly and severally liable to pay-
  - (i) for the first indemnity period, an amount equal to 400% of the total amount payable by the firm as premium under and in respect of the second Master Policies for the period from 1 October 1987 to 30 September 1988; and
  - (ii) thereafter, for each subsequent indemnity period an amount equal to 200% of the rate of contribution for the preceding indemnity period until such principal or principals have made disclosure of such particulars of the gross fee income or other information as was required.
- (d) Upon a principal making good all failures under sub-subparagraph (c), the Company shall assess the contribution payable in respect of the Practice. If the amount of the contribution as assessed-
  - (i) is less than the amount of the contribution paid, the difference shall be repaid to his firm without interest; or
  - (ii) exceeds the amount of the contribution paid, his firm shall upon demand pay to the Company the balance of the amount of the contribution together with interest on the amount of such balance at the rate of 4% per annum above the best lending rate from time to time of The Hongkong and Shanghai Banking Corporation Limited calculated from the date stipulated in or prescribed by the Society under rule 8(1)(c) until receipt of payment by the Company.
- (2) In the case of a solicitor or solicitors commencing a Practice during any indemnity period the contribution payable in respect of such Practice for the year of commencement of Practice shall be assessed by the Company based on the average contribution paid for the current indemnity period by firms of similar composition to the Practice and be paid pro rata and such basis shall continue to be applied until such Practice shall have submitted a certified public accountant (practising)'s certificate of gross fee income and other information in accordance with the foregoing provisions of this paragraph. The basic contribution payable by such Practice during any indemnity period shall not be less than \$20,000.

- (3) The basic contribution payable in respect of a Practice for an indemnity period shall not be less than \$20,000.
- (4) The contribution payable for an indemnity period shall be due and payable to the Company on or before 30 September immediately preceding the indemnity period but in the case of the first indemnity period it shall be payable on the date decided by the Society and in the case of a Practice referred to in subparagraph (2) the contribution payable for its first period of indemnity shall be paid forthwith on demand.
- (5)
  - (a) Notwithstanding anything to the contrary in this paragraph, the Company may, with the authority of a resolution of the Council, at any time during an indemnity period demand in writing from every principal who is required to make contributions in accordance with paragraph 1 at any time during the indemnity period when the demand is made such further sum as may be authorized by the Council to make up a deficit or anticipated deficit in the fund, and such principal shall be bound to pay such further sum to the Company within 30 days after the date of issue of such written demand.
  - (b) Subject to the amount of payments received from such principal being sufficient to cover the amount of the deficit or anticipated deficit, the sum which such principal shall be required to pay shall be that proportion of the deficit or anticipated deficit as the total amount of the contributions payable after appropriate adjustment as provided in subparagraph (1)(b)(iv) by such principal for the indemnity period when the demand is made bears to the total amount of the contributions payable after adjustment by all principals under the Professional Indemnity Scheme for such indemnity period, provided that such principal may be required to make an interim payment on account of the sum which such principal is to pay hereunder. Such interim payment (which shall be subject to subsequent adjustment) shall be that proportion of the deficit or anticipated deficit as the contribution paid by such principal for the indemnity period when the demand is made bears to the total amount of the contributions then paid for such indemnity period.
- (6)
  - (a) If during any period of 4 indemnity periods immediately prior to any indemnity period, an insurer or the Company on behalf of the indemnified has paid, or is deemed, pursuant to sub-subparagraph (b), to have paid, any claim, then the contribution payable for such indemnity period shall not be the basic contribution but shall be calculated in accordance with the formula set out in paragraph 2(1)(a)(ii) by multiplying the basic contribution by the appropriate factor established pursuant to sub-subparagraph (d).
  - (b)
    - (i) For the purposes of sub-subparagraph (a), if during any period of 4 indemnity periods immediately prior to any indemnity period, an insurer or the Company on behalf of a former Practice has paid any claim and a former principal of such former Practice is a principal at the relevant date, then the claim so paid shall be deemed to have been paid on behalf of the firm of which such former principal is a principal at the relevant date, except that where there is more than one former principal of such former Practice who is a principal at the relevant date the claim so paid shall be divided equally among each such former principal whose