

**Submission by the Law Society on the
Solicitors' Accounts (Amendment) Rules to the
LegCo Panel on Administration of Justice and Legal Services**

1. The Law Society set up a working party in 2001 to conduct an overview of the Solicitors' Accounts Rules ("the Rules"). The Working Party fully considered the English Solicitors' Accounts Rules on which most of the proposed amendments are modeled. As a result of the review, certain amendments to the Rules including the incorporation of Practice Direction J were proposed and approved by the Council of the Law Society. The Chief Justice has approved the amendments subject to the Law Society informing the LegCo Panel of the points raised by the Consumer Council in relation to the payment of interest on clients' accounts.
2. Practice Direction J ("the Practice Direction") (Appendix 1) was issued by the Law Society to its members in 1997. The Practice Direction is a default provision in the absence of any agreement with the client. It requires solicitors to deposit a client's money in an interest bearing account and to account to the client for any interest earned. The "trigger point" at which the solicitors become accountable varies according to the amount deposited and the period that it remains under the solicitor's control. There is a minimum amount of deposit and period set out in the Practice Direction.
3. Interest rates in Hong Kong have declined significantly since 1997. The savings interest rate in 1997 was 5.375% per annum. It dropped to 0.01% per annum in 2004. The administrative costs for solicitors in calculating and accounting for the interest accrued frequently exceeds the interest earned at times when interest rates are so low. Accordingly the Council of the Law Society decided to suspend the Practice Direction in January 2004 until such time as interest rates reached the level payable in January 1997 when the Practice Direction was promulgated.
4. There was discussion between the Consumer Council and the Law Society over the possibility of setting up a mechanism for reviewing and restoring the operation of the Practice Direction. The relevant correspondence between the Society and the Consumer Council is at Appendix 2.
5. The Council of the Law Society at its meeting on 21 June 2005 decided to make it mandatory for solicitors to account for interest in excess of HK\$500 to their clients. The proposed new rule will require solicitors to pay clients' monies into interest bearing accounts. Solicitors will be required to pay the interest to the client if the amount of the client's monies deposited are of an amount specified in column 1 of the Schedule, they have been retained in the account continuously for a period specified in column 2 of the Schedule and the amount of the interest thus accrued exceeds \$500.
6. The Schedule provides as follows:

| <u>Amount</u> | <u>Period</u> |
|--|-------------------------------|
| More than \$50,000 but less than \$100,000 | Not less than 8 weeks |
| More than \$100,000 but less than \$250,000 | Not less than 4 weeks |
| More than \$250,000 but less than \$3,000,000 | Not less than 2 weeks |
| More than \$3,000,000 | Not less than 4 working days. |

APPENDIX I

Practice Directions 1990

J. INTEREST ON CLIENTS' ACCOUNT

1. REQUIREMENT TO PAY INTEREST

Subject to paragraph 2 hereof, on each occasion when a solicitor holds or receives money for or on account of a client in respect of a particular matter, the solicitor shall deposit such money in a designated interest bearing clients' account in a bank and shall account to the client for any interest earned thereon failing which the solicitor shall pay to the client a sum equivalent to the interest which would have accrued for the benefit of the client if the money had been deposited in a Hong Kong dollar savings account of the Hongkong and Shanghai Banking Corporation Limited.

2. MINIMUM AMOUNT AND TIME

A solicitor shall only be required to account in accordance with paragraph 1 above where the solicitor holds the money for as long as or longer than the time set out in the right hand column of the Table below and the minimum amount held equals or exceeds the corresponding figure in the left hand column of the Table:

The Table

| Minimum Amount | Minimum Time |
|---|----------------|
| Exceeding \$3,000,000.00 | 4 Banking Days |
| Exceeding \$250,000.00 but not exceeding \$3,000,000.00 | 2 Weeks |
| Exceeding \$100,000.00 but not exceeding \$250,000.00 | 4 Weeks |
| Exceeding \$50,000.00 but not exceeding \$100,000.00 | 8 Weeks |

3. REMEDY AVAILABLE TO CLIENT

Without prejudice to any other remedy which may be available to him, any client who feels aggrieved that interest, or a sum equivalent thereto, has not been paid to him under these Practice Directions shall be entitled to require the solicitor to obtain from the Council of the Law Society a certificate as to whether or not interest ought to have been earned for him, and if so, the amount of such interest. Upon receipt of such a request the Council shall cause the matter to be investigated and if it determines that interest should have been earned it shall issue a certificate to that effect setting out the amount of interest which should have been earned in accordance with these Practice Directions. On the issue of such a certificate the sum certified to be due shall be payable by the solicitor to the client.



THE

LAW SOCIETY
OF HONG KONG

香港律師會

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SG/FA/1925

26th November 2003Mrs. Pamela Chan, JP,
Chief Executive,
Consumer Council,
22nd Floor, K. Wah Centre,
191 Java Road, North Point,
Hong Kong.

Dear

*Pamela.***Re : The Law Society Practice Direction J**

From time to time the Law Society issues Practice Directions to its members who are bound by them. I attach a copy of Practice Direction J with which, I believe, you are already familiar.

The Practice Direction was introduced in 1997 and requires solicitors to account to their clients for interest on monies deposited with solicitors provided the amount so deposited exceeds HK\$50,000 and is deposited for a significant period of time. The "trigger point" at which the solicitor becomes accountable varies according to the amount deposited and the time that it remains under the solicitor's control.

For sometime the level of interest payable by the banks in Hong Kong has been substantially lower than that when the Practice Direction was introduced. The cost of calculating the amount of interest payable in the majority of cases exceeds the amount of the interest. Under the Practice Direction solicitors are entitled to make an administrative charge in respect of the work undertaken in making the deposit, withdrawing it and accounting to the client for the interest that has accrued. Currently that administrative fee, although fair and reasonable, has become disproportionate to the interest that is recovered.

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26th November 2003

Mrs. Pamela Chan, JP
Chief Executive
Consumer Council

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Accordingly the Council having considered both the interests of the profession and the public, has come to the conclusion that it would be appropriate to suspend the operation of Practice Direction J until such time as interest rates have reached the level payable in January 1997 when the Practice Direction was promulgated. We propose to give notice of this to the profession with effect from 1st January 2004 although it will, of course, remain open to solicitors and their clients to reach any other options should they so wish. We very much hope that the Council would appreciate the difficult position which the profession has been placed as a result of the very low rate of interest payable by banks and will understand the reason why the Council has to suspend Practice Direction J.

Yours sincerely,



Patrick Moss
Secretary General

Encl.

PM/ff

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4. EXCEPTIONS

Subject to paragraph 5 hereof nothing in the Practice Directions shall:

- (a) affect any agreement in writing whenever made between a solicitor and his client as to the application of the client's money or interest thereon;
- (b) apply to money received by a solicitor, being money subject to a trust of which the solicitor is a trustee; or
- (c) affect any agreement in writing for payment of interest on stakeholder money held by the solicitor.

5. ARRANGEMENT FOR NO INTEREST SHALL BE VOID

Any arrangement howsoever made to the effect that no interest shall be payable in respect of monies deposited with a solicitor shall be void.

6. ADMINISTRATION FEE PERMITTED

A solicitor who deposits a client's money in accordance with paragraph 1 hereof shall be entitled to charge and be paid such sum as is fair and reasonable by way of an administration charge in respect of the work undertaken in the deposit and withdrawal of monies and accounting to the client for the interest accrued thereon.

This Practice Direction came into effect on 1 January 1997.



消費者委員會 CONSUMER COUNCIL

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來函編號 YOUR REF.

來函編號 OUR REF. CC 1/94

15 December 2003

Mr. Patrick MOSS
Secretary General
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road
Central, Hong Kong

Dear Patrick,

Re: The Law Society Practice Direction J

Thank you for your letter of 26 November 2003 informing the Consumer Council regarding the Law Society of Hong Kong (the LawSoc) decision to suspend the operation of Practice Direction J which requires solicitors to account to their clients for interest on monies deposited with solicitors.

The Council can understand the difficult position which the legal profession has been placed as a result of the very low rate of interest payable by banks, and agrees that the Practice Direction J could be suspended.

However, the Council considers it important for the LawSoc and the Administration to develop a more relevant mechanism to restore the Practice Direction J than simply the time schedule that the LawSoc has recommended; i.e. when interest rates are restored to the level that existed in January 1997 when the Practice Direction J was first introduced.

It is assumed that the 'trigger point' found in the table in the current Practice Direction J, at which a solicitor is required to account for interest, i.e. \$50,000 deposit for 8 weeks, was calculated with regard to average administrative fees charged by solicitors for accounting for interest on amounts deposited at the time and that they were below the return that would be achieved at the time on a \$50,000 deposit for 8 weeks. Clients would therefore be entitled to receive the difference between the fee and the interest. However, it may have been the case that this trigger point, i.e. the difference between fees and interest payable was reached before January 1997.

The Council considers it is more appropriate therefore that the point in time for reintroducing the Practice Direction J should be set with regard to when average administrative fees are below the returns achieved by interest rates for example, similar to the previous basic trigger point of \$50, 000 for an 8 week saving deposit.

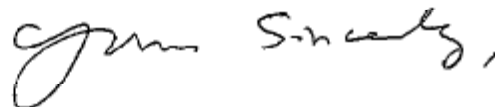
The Council also suggests that having regard to the large amounts that could be deposited with solicitors, as noted in the table to the current Practice Direction J, consideration should be given to maintaining the Practice Direction J for a particular level of funds at the higher end of the scale in the table, where the interest that accrues reaches a level above the average administrative fees for handling those large amounts.

For the sake of public interest, it is also suggested, if this is not already practiced by solicitors, that they should make the administrative fee transparent to clients, i.e. the cost to solicitors of undertaking necessary calculations and undertaking processes, in order to allow clients to have a better picture of the situation.

To sum up, the Council's comments are as follows:

- (a) To set up a more appropriate mechanism for reviewing and restoring the operation of the Practice Direction; than merely accepting as a reference point the interest rates payable in January 1997.
- (b) To stipulate a break-even point, within the table used in the current Practice Direction, at which to allow some of the interest earned on clients' money to be paid to clients under current economic conditions.
- (c) To encourage solicitors to make the calculation of the administrative fee transparent to their clients.

The Council has taken the liberty to copy this letter to the Department of Justice. Should you have any questions about the above views, please free feel to contact me on 2856-8585.



Mrs. CHAN WONG Shui
Chief Executive

CWS/RC/VT

c.c. Department of Justice (Mr. Bob ALLCOCK, Solicitor General, Office of the Solicitor General)



THE
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16th February 2004

Mrs. Pamela Chan, JP,
Chief Executive,
Consumer Council,
22nd Floor, K. Wah Centre,
191 Java Road, North Point,
Hong Kong.

Dear *Pamela,*

Re : The Law Society Practice Direction J

Thank you for your letter dated 15th December concerning the Law Society Practice Direction J on the requirement for solicitors to account to their clients for interests on monies deposited with them.

The Council has discussed the matter further and resolved to issue a circular to the profession suspending until further notice the operation of Practice Direction J.

As you know, the Practice Direction is a "default" provision which came into effect only if the solicitor and client had not agreed on alternative arrangements for payment of interest. At the time when it was implemented in 1997, the interest on savings accounts was 5.375% per annum. Currently the interest rate on such accounts is 0.01% per annum. In practical terms this means that if a client were to deposit HK\$50,000 with a solicitor in 1997 for a minimum period of 8 weeks, the interest which would have accrued would have been HK\$413.47. The same amount invested for the same period today would earn interest of only HK\$7.70.

The cost of investing monies in a separate savings account, calculating the interest that has accrued and accounting to the client, all of which are administrative actions in respect of which a solicitor is entitled to charge, generally exceed the amount of interest accruing to the account. The steps to be taken in the light of such a small return are seen to be unduly onerous for the profession and result in little, if any, benefit for the client whilst interest rates remain so low.

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16th February 2004

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It was with this in mind that the Council resolved to suspend operation of Practice Direction J although it has been pointed out to the profession that solicitors have obligations arising out of their fiduciary relationship with their clients and that it is not permitted for them to make a profit out of that relationship without the client's consent.

The Council has resolved that the Practice Direction would remain suspended from 1st January 2004 until such time as interest rates resume the level at which they were at the time the Practice Direction was promulgated in January 1997 namely, 5.375%. The comments that you kindly made in your letter of 15th December have been noted but the Council was of the view that it was a more satisfactory arrangement to provide a greater degree of certainty of the "trigger point" for resumption of the Practice Direction by stating that the provisions of Practice Direction would come into force again once a particular level interest rate was established. However, I hasten to say, and it has been made clear to the profession, that clients may still enter into specific arrangements with the solicitors for payment of interest in particular cases and of course under those circumstances the solicitors must account to the client for the interest received.

I hope this clarifies the position.

Yours sincerely,



Patrick Moss
Secretary General

PM/ff