

25 November 2002

Mrs Percy Ma
Clerk to LegCo Panel on Administration of
Justice and Legal Services
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mrs Ma

Re : Practising Certificate (Special Conditions) Rules

Please find enclosed for the assistance of the Panel an advanced copy of the English text of the Practising Certificate (Special Conditions) Rules, prescribed under sections 6(5)(b) and (e) of the Legal Practitioners Ordinance as amended by the Statute Law (Miscellaneous Provisions) Ordinance recently.

The Rules have been approved and signed by the Chief Justice. After they have been signed by the members of the Council of the Society, they will be gazetted on 29 November 2002.

Yours sincerely

Heidi Chu
Assistant Director
Regulation and Guidance

c.c. Mr Patrick Moss
Secretary General, Law Society

PRACTISING CERTIFICATE (SPECIAL CONDITIONS) RULES

CONTENTS

Section		Page
1.	Commencement	1
2.	Interpretation	1
3.	Conditions subject to which a practising certificate may be issued	1
4.	Matters to be considered by the Society when imposing conditions on a practising certificate	4
5.	Applicant to give 6 weeks prior notice of application	6
6.	Effect of issue of practising certificate free of conditions	6
7.	Conditions subject to which a practising certificate may be amended	7
8.	Matters to be considered by the Society when imposing conditions on an already issued practising certificate	8
9.	Effective date of amendment	8
10.	Removal of conditions	9
Consequential Amendments		
Practising Certificate (Solicitors) Rules		
11.	Schedule amended	9
Schedule 1	Conditions subject to which a practising certificate may be issued	11
Schedule 2	Forms	12

PRACTISING CERTIFICATE (SPECIAL CONDITIONS) RULES

(Made by the Council of The Law Society of Hong Kong under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice)

1. Commencement

These Rules shall come into operation on a day to be appointed by the President of The Law Society of Hong Kong by notice published in the Gazette.

2. Interpretation

In these Rules, unless the context otherwise requires -

"Continuing Professional Development Scheme" (專業進修計劃) means the scheme referred to in section 4 of the Continuing Professional Development Rules (Cap. 159 sub. leg.);

"CPD accreditation points" (評審學分) has the meaning assigned to that term by section 2 of the Continuing Professional Development Rules (Cap. 159 sub. leg.).

3. Conditions subject to which a practising certificate may be issued

For the purposes of section 6(5)(b) of the Ordinance, the conditions subject to which the Society may issue a practising certificate to a solicitor are -

- (a) in the case of a solicitor applying for the issue of a practising certificate for the first time, any one or more of the conditions numbered 2, 6 and 7

in Schedule 1;

- (b) in the case of a solicitor who has been censured or ordered to pay a penalty or costs by the Solicitors Disciplinary Tribunal constituted under section 9B of the Ordinance since he was last issued a practising certificate, any one or more of the conditions specified in Schedule 1;
- (c) in the case of a solicitor who has been invited by the Society to give an explanation in respect of any matter relating to his conduct since he was last issued a practising certificate and has failed or refused to give an explanation in respect of that matter which the Council regards as sufficient and satisfactory, and has been notified in writing by the Society that he has so failed or refused, any one or more of the conditions specified in Schedule 1;
- (d) in the case of a solicitor who has been suspended from practice since he was last issued a practising certificate and the period of his suspension has expired, any one or more of the conditions specified in Schedule 1;
- (e) in the case of a solicitor who has had his name removed from or struck off the roll of solicitors since he was last issued a practising certificate, his name has been restored to the roll of

solicitors, any one or more of the conditions specified in Schedule 1;

- (f) in the case of a solicitor who has become bankrupt since he was last issued a practising certificate, and has been discharged within the meaning of the

~~Bankruptcy Ordinance (Cap. 6), any one or more of the conditions specified in Schedule 1;~~

- (g) in the case where a judgment in Hong Kong or elsewhere which involves the payment of money has been given against the solicitor since he was last issued a practising certificate, not being a judgment -

- (i) limited to the payment of costs; or
- (ii) as to the whole effect of which upon him he is entitled to indemnity or relief from some other person; or
- (iii) for a sum less than HK\$50,000 or which has been satisfied,

any one or more of the conditions specified in Schedule 1;

- (h) in the case of a solicitor who has not been in full-time practice of law for 2 continuous years immediately prior to the giving of notice of intention to apply for a practising certificate to the Society, any one or more of the conditions specified in Schedule 1;

- (i) in the case of a solicitor who was a principal in or a consultant of a firm at the time of an intervention of the firm by the Society under section 26A and Schedule 2 to the Ordinance during the preceding 18 months, any one or more of the conditions specified in Schedule 1.

4. Matters to be considered by the Society when imposing conditions on a practising certificate

(1) In considering for the purposes of section 3 the imposition of any of the conditions set out in Schedule 1, the Society may have regard to the following -

- (a) in the case of the condition numbered 2 in Schedule 1 -

- (i) the extent of the solicitor's experience in the practice of law in Hong Kong or elsewhere;
- (ii) whether or not the solicitor is to be supervised by a solicitor who holds an unconditional practising certificate or has substantial experience in the practice of law in Hong Kong or elsewhere;
- (iii) where the employer is not a solicitor, the nature of the employer's business and the work proposed to be undertaken by the solicitor, the size of the employer's

business and its legal department;

(b) in the case of the condition numbered 3 in Schedule 1 -

(i) the identity and disciplinary record of the partners;

(ii) the nature and frequency of complaints made against the partnership;

(iii) the number of successful claims made against any of the partners for negligence or breach of duty;

(c) in case of the condition numbered 4 in Schedule 1 -

(i) the nature and frequency of complaints made against the solicitor;

(ii) the conditions which have been placed on the solicitor's practising certificate since his date of admission;

(iii) the solicitor's current financial circumstances.

(2) In considering for the purposes of section 3 the imposition of conditions in relation to the issue of a practising certificate to a solicitor, the Society may have regard to the following -

(a) in the case mentioned in section 3(b), the findings and orders of the Solicitors Disciplinary Tribunal;

(b) in the case mentioned in section 3(c), the seriousness of the matter and the nature and extent

of the explanation, if any, given by the solicitor;

(c) in the case mentioned in section 3(d) or (e) -

(i) the findings and orders of the Solicitors Disciplinary Tribunal or the reasons for the solicitor's suspension from practice or removal of his name from the roll of solicitors;

(ii) the period of time that has elapsed since his suspension or the removal of his name from the roll of solicitors;

(iii) the solicitor's activities during that intervening period;

(d) in the case mentioned in section 3(g), the amount of the judgment and the solicitor's current financial circumstances.

5. Applicant to give 6 weeks prior notice of application

In any case where section 3 would have effect if an application had been made, the applicant shall not less than 6 weeks before he applies for a practising certificate give to the Society notice in writing in Form 1 in Schedule 2 of his intention to so apply, unless the Society or the Chief Judge otherwise orders.

6. Effect of issue of practising certificate free of conditions

Where section 3 has effect by reason of any such circumstances as are mentioned in section 3(b), (c), (d), (e), (f), (g), (h) or (i) and a practising certificate free of conditions is issued by the Society under the Ordinance to a solicitor, section 3 shall not after the issue of the practising certificate have effect in relation to that solicitor by reason of those circumstances except as regards any circumstances of whose existence the Society is unaware at the time the certificate is issued.

7. Conditions subject to which a practising certificate may be amended

(1) For the purposes of section 6(5)(e) of the Ordinance, and subject to subsection (2), the conditions that may be added by the Society to an already issued practising certificate are any one or more of the conditions specified in Schedule 1.

(2) Subsection (1) has effect in relation to a practising certificate already issued to a solicitor in the case, and only in the case, where -

- (a) in the event of an application for a practising certificate being made by the solicitor at any time during the period for which his current certificate is in force, this section would have effect in relation to him by reason of any of the circumstances mentioned in section 3(b), (c), (d), (g) or (i);
- (b) the solicitor has entered into a voluntary

arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with his creditors;

(c) the solicitor has been charged with, or convicted of -

(i) an offence involving dishonesty or deception; or

(ii) an offence which in the opinion of the Council has compromised or impaired or is likely to compromise or impair the reputation of the profession.

8. Matters to be considered by the Society when imposing conditions on an already issued practising certificate

In considering for the purposes of section 7(1) the addition of any of the conditions set out in Schedule 1 to an already issued practising certificate, the Society may have regard to the matters set out in section 4.

9. Effective date of amendment

(1) Subject to subsection (2), the amendment shall have effect from the date when the solicitor concerned is notified of the Society's intention to amend the practising certificate.

(2) If the Society's decision to amend a practising certificate by adding conditions is appealed against under section 6(9) of the Ordinance, the decision shall be suspended in its operation as from the day on which the appeal is made until such

appeal is disposed of under section 6(11) of the Ordinance.

(3) Where there is pending against any judgment or order an appeal by a solicitor which, if successful, would result in section 7 no longer being applicable to him, the Society shall not give a notification under subsection (1) in his case so long as ~~the appeal is pending, unless in the opinion of the Society the~~ proceedings on that appeal have been unduly protracted by him or are unlikely to be successful.

(4) Subsection (3) does not apply to the exercise of the Society's powers under this section by virtue of section 7(2)(c).

10. Removal of conditions

Any condition imposed by the Society in accordance with these Rules shall remain in effect until such time as the Society determines otherwise.

Consequential Amendments

Practising Certificate (Solicitors) Rules

11. Schedule amended

(1) Form 1 of the Schedule to the Practising Certificate (Solicitors) Rules (Cap. 159 sub. leg.) is amended by repealing "表格" and substituting "表格 1".

(2) Form 1 of the Schedule is amended by adding after paragraph 2 -

"2A. Tick the appropriate box(es):

My application comes within section 3 of the Practising Certificate (Special Conditions) Rules (L.N. of 2002). I gave The Law Society of Hong Kong notice in writing of my intention to apply for a practising certificate not less than 6 weeks ago, namely on

My application comes within section 3 of the Practising Certificate (Special Conditions) Rules (L.N. of 2002). I gave The Law Society of Hong Kong notice in writing of my intention to apply for a practising certificate less than 6 weeks ago, namely on

My application comes within section 3 of the Practising Certificate (Special Conditions) Rules (L.N. of 2002). I have not given The Law Society of Hong Kong any prior notice in writing of my intention to apply for a practising certificate.

My application does not come within section 3 of the Practising Certificate (Special Conditions) Rules (L.N. of 2002)."

SCHEDULE 1

[ss. 3, 4, 7 & 8]

CONDITIONS SUBJECT TO WHICH A PRACTISING
CERTIFICATE MAY BE ISSUED

1. The solicitor shall complete a period of practice (not exceeding 24 months) as specified by the Council under the supervision of a solicitor holding an unconditional practising certificate.
2. The solicitor may only practise in an employment that has been approved by the Council.
3. The solicitor may only practise in a partnership that has been approved by the Council.
4. The solicitor may only practise on his own account with the approval of the Council.
5. The solicitor shall not sign cheques on a client account.
6. The solicitor shall accumulate such CPD accreditation points or undertake and complete one or more courses of the Continuing Professional Development Scheme as specified by the Council.
7. The solicitor shall undertake additional academic or training courses or examinations specified by the Council.

SCHEDULE 2

[s. 5]

FORMS

FORM 1

THE LAW SOCIETY OF HONG KONG

~~NOTICE OF INTENTION TO APPLY FOR A PRACTISING CERTIFICATE~~

(If there is insufficient space provided for your answer, please continue on a separate sheet of paper, specifying the question number to which your answer relates, and add your signature.)

1. Name: _____

2. Address: _____
Office: _____

Home: _____

3. I intend to apply for a practising certificate after the expiry of 6 weeks from the date of lodging this form with The Law Society of Hong Kong.

4. (1) I provide the following information in connection with my intended application:

(a) This is my first application for the issue of a practising certificate in Hong Kong.YES/NO*

(b) I have been censured or ordered to pay a penalty or costs by the Solicitors Disciplinary Tribunal constituted under section 9B of the Legal Practitioners Ordinance (Cap. 159) since I was last issued a practising certificate.YES/NO*

If "YES", provide full details.

(c) I have been notified in writing by The Law Society of Hong Kong that I have failed or refused to give a sufficient and satisfactory explanation in relation to my conduct since I was last issued a practising certificate.YES/NO*

The date upon which such notice was given to me was

- (d) I have been suspended from practice since I was last issued a practising certificate.YES/NO*

If "YES" and the period of suspension has expired, provide full details and state the date upon which your period of suspension expired.

-
- (e) I have had my name removed from or struck off the roll of solicitors since I was last issued a practising certificate.YES/NO*

If "YES" and your name has been restored to the roll of solicitors, provide full details and state the date upon which your name was restored.

- (f) I have become bankrupt since I was last issued a practising certificate.YES/NO*

If "YES" and you have been discharged from bankruptcy within the meaning of the Bankruptcy Ordinance (Cap. 6), provide full details and state the date upon which you were discharged.

- (g) A judgment in Hong Kong or elsewhere involving the payment of money has been given against me since I was last issued a practising certificate. ...YES/NO*

If "YES", provide full details including whether the judgment is still outstanding, and if it has been satisfied, evidence of that fact.

- (h) I have been in full-time practice of law for 2 continuous years immediately prior to the date of this notice.YES/NO*

If "YES", provide full details of the firm(s) in which you have been engaged in practice or the organization(s) by whom you have been employed specifying your job title and the jurisdiction(s) in which you have been practising.

If "NO", provide full details of your activities during that period, including the details of the organization(s) by whom you have been employed, specifying your job title and whether you have been employed full-time or part-time.

- (i) I was a principal in or a consultant of a firm at

the time of an intervention by The Law Society of Hong Kong under section 26A and Schedule 2 to the Legal Practitioners Ordinance (Cap. 159). ...YES/NO*

If "YES", provide full details.

(2) Tick the appropriate box(es):

(a) I am engaged in private practice in Hong Kong:

- on my own account
- in partnership
- as an assistant solicitor
- as a consultant

(b) I am employed:

- in commerce or industry
- as a law teacher
- by Government

(3) Details of all firms in which I am engaged in practice or by whom I am employed are as follows:

FIRM/ORGANIZATION	CAPACITY	FULL-TIME/ PART-TIME/OTHER
-------------------	----------	-------------------------------

(4) I have commenced/ceased* to practise on my own account/in partnership* in Hong Kong in the 12 months ending on 31 October immediately before my application, details are as follows:

Name(s) of firm(s): _____

Date(s) of commencing/ceasing* practice: _____

I solemnly and sincerely declare that all the information given by me in this application is true and correct to the best of my knowledge and belief and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Ordinance (Cap. 11).

Declared at Hong Kong this _____ day of _____.

Before me,

*Delete if inapplicable.

Approved this 20th day of November 2002.

Andrew Li

Chief Justice

Made this day of 2002.

Explanatory Note

These Rules prescribe the conditions which may be imposed by The Law Society of Hong Kong ("the Society") in respect of the issuance of a practising certificate or by way of the amendment of an already issued practising certificate. In regard to some of the conditions, the Rules further prescribe the matters that the Society shall have regard to when considering the imposition of the conditions.