

# 立法會 *Legislative Council*

LC Paper No. CB(2)548/03-04(02)

Ref : CB2/SS/3/03

## **Subcommittee on Summary Disposal of Complaints (Solicitors) Rules**

### **Background paper prepared by Legislative Council Secretariat**

#### **Summary disposal of complaints against solicitors**

#### **Purpose**

This paper provides background information on past discussions of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001 (the Bills Committee) on the proposed summary disciplinary procedure for dealing with breaches by solicitors under a fixed penalty system, without having to conduct a full hearing of the Solicitors Disciplinary Tribunal (SDT) in relation to the breaches.

#### **Background**

2. Prior to the amendments to the Legal Practitioners Ordinance (Cap. 159) by the Statute Law (Miscellaneous Provisions) Ordinance (23 of 2002), there was no mechanism for dealing with minor breaches by solicitors. Either full scale SDT hearings must be convened, or the Council of the Law Society of Hong Kong might issue sanction-less letters of regret or disapproval to the solicitors concerned. According to the Law Society, full SDT hearings were time consuming and expensive for all parties, and letters of regret or disapproval in practice had little effect to deter the commission of breaches. The introduction of a summary procedure to deal with minor breaches was intended to fill the gap between the issue of letters of regret or disapproval and a full SDT hearing.

#### **Discussion of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001**

##### New disciplinary procedure for summary disposal of complaints against solicitors

3. The Statute Law (Miscellaneous Provisions) Bill 2001 was introduced into the Legislative Council (LegCo) on 4 July 2001 and a Bills Committee was formed to study the Bill. The Bill was passed by LegCo on 10 July 2002.

4. The Bill sought, inter alia, to amend the Legal Practitioners Ordinance (Cap. 159) to implement a new disciplinary procedure for the summary disposal of complaints by the Tribunal Convenor of SDT Panel by way of a fixed penalty imposed on a solicitor who admitted liability for the breach of a prescribed provision, practice direction or principle of professional conduct prescribed in rules made by the Council of the Law Society.

5. In essence, the procedure proposed for summary disposal of complaints was as follows -

- (a) in considering whether a matter was suitable for disposal by the Tribunal Convenor, the Council of the Law Society might take into account whether the alleged breach was deliberate, the gravity of the alleged breach, and any other factor it considered relevant;
- (b) the matter for disposal involved an alleged breach which was listed as a scheduled item in the relevant rules to be made by the Council of the Law Society; and
- (c) if the solicitor complained of did not admit liability or did not agree to have the complaint disposed of by way of the fixed penalty system, the matter would be dealt with by a SDT hearing.

#### Scope of breaches suitable for summary disposal

6. According to the Law Society, the types of offences that were suitable for disposal under the new disciplinary procedure were intended to be limited to minor technical breaches of the rules not involving dishonesty or monetary issues. These breaches were not considered appropriate for referral to a full hearing of SDT but nonetheless were deserving of sanction. In defining the scope of the breaches that might be dealt with by the Tribunal Convenor by way of a fixed penalty, the seriousness of the breach was a starting point. However, other circumstances might also be relevant, including, for example, whether the breach was merely an oversight or deliberate.

7. The Law Society provided a list of the offences proposed to be covered by the rules to the Bills Committee for reference (**Appendix I**). The Law Society also informed the Bills Committee that a total of 168 letters of regret or disapproval were issued to solicitors in 2000, as compared with 118 in 1999. Out of the 168 letters of regret or disapproval, 37 came within the scope of the proposed fixed penalty system. The remaining 131 letters involved trivial complaints against solicitors.

#### Offences involving dishonesty

8. The Bills Committee was of the view that any breach committed by

solicitors which involved dishonesty should not be dealt with under the new disciplinary procedure. The Law Society considered that the provision in the Bill that the Council of the Law Society might take into account, inter alia, "*whether the alleged breach is deliberate*" would preclude breaches involving dishonesty from being disposed of by way of the new disciplinary procedure. To remove the ambiguity, the Bills Committee suggested that the drafting should be revised by adding an express provision to specify that the Council should take into account whether the alleged breach involved a dishonest intent.

9. The Administration, after consulting the Law Society, agreed to move an amendment to incorporate an additional factor of "*whether the alleged breach has been committed with a dishonest intent*" in the Bill. The Administration further advised the Bills Committee that the Law Society had agreed that offences of dishonesty would be precluded from the list of scheduled items in the rules to be made by its Council.

10. The text of new section 9A(1B) of the Legal Practitioners Ordinance (section 103(a) of the Statute Law (Miscellaneous Provisions) Ordinance (Ordinance No. 23 of 2002)) is in **Appendix II**. The provisions shall come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette, pending the making of the Rules to implement the summary disciplinary procedure.

#### Consultation with members of the Law Society

11. On whether members of the Law Society were aware of the proposed new disciplinary procedure, the Law Society had provided an article entitled "Proposed Alternative Disciplinary Procedure" published in Hong Kong Lawyer in March 2001 for the reference of the Bills Committee (**Appendix III**).

12. Some members of the Bills Committee had expressed the view that the Law Society should fully explain to its members details of how the proposed fixed penalty mechanism would operate. They also stressed that in implementing the system, the Law Society should not lose sight of the need to maintain transparency, and protect the public's right to know concerning breaches of professional conduct committed by legal practitioners.

#### **The Summary Disposal of Complaints (Solicitors) Rules gazetted on 21 November 2003 (L.N. 251)**

13. The Summary Disposal of Complaints (Solicitors) Rules, made by the Council of the Law Society of Hong Kong under section 73 of the Legal Practitioners Ordinance, was tabled in LegCo on 26 November 2003. At its meeting on 29 November 2003, the House Committee agreed to form a subcommittee to study the Rules.

14. The Rules seek to implement the alternative disciplinary procedure under section 9AB of the Ordinance. A copy of the Rules provided by the Law Society together with a letter to the Panel on Administration of Justice and Legal Services explaining the Rules were circulated to the Panel under LC Paper No. CB(2)375/03-04(01) on 19 November 2003 (**Appendix IV**).

15. The Administration wrote to the Subcommittee on Summary Disposal of Complaints (Solicitors) Rules on 5 December 2003. The Administration's letter (issued vide LC Paper No. CB(2)548/03-04(03) on 5 December 2003) provided information on the Law Society's response to the following issues raised by the Administration in relation to the operation of the Rules -

- (a) circumstances in which the Council of the Law Society would revoke a decision to submit a matter to the Tribunal Convenor under section 9(1A) of the Legal Practitioners Ordinance;
- (b) the rationale of fixing the penalties at \$10,000; and
- (c) the rationale of standardising the investigation costs at \$15,000.

Council Business Division 2  
Legislative Council Secretariat  
5 December 2003

**OFFENCES WHICH MAY BE DEALT WITH  
BY MEANS OF AN INTERMEDIATE SANCTION**

**NOTE: For any of the offences listed below, the Council has complete discretion as to the action to be taken for breach. It may resolve to take no action, or to issue a letter of regret or disapproval, or to agree to deal with the matter by way of intermediate sanction, or to refer the matter to a Solicitors Disciplinary Tribunal for a full hearing.**

**LEGAL PRACTITIONERS ORDINANCE**

Section 8 “Accountant’s reports”

- Failure to submit an accountant’s report within the time limits prescribed in subsections (1) and (2)

**SOLICITORS’ PRACTICE RULES**

Rule 2B “Letterhead”

(After the firm has been given the opportunity to rectify the breach and has not done so):

- Failure to comply with mandatory requirements set out in subrule (2)
- Where a firm opts to state on its letterhead any of the matters set out in subrule (3), failure to satisfy the pre-conditions to do so

Rule 4A “Supervision of office”

- Breach of subrule (a) requiring a solicitor with a practising certificate to be in attendance at an office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a solicitor holding an unconditional practising certificate

Rule 4B “Control of employment of unqualified persons”

- Temporary breach of the ratio of unqualified person to solicitors in subrule (1) without having sought a waiver from the Council
- Breach of subrule (2) by employing an unqualified person who is also employed by another firm without Council approval
- Breach of subrule (4) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 5 “Particulars relating to firms”

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

Rule 5D “Steps to be taken in criminal matters”

- Breach of subrule (a) – failure to issue a confirmation letter to the client
- Breach of subrule (b) – failure to notify the client in writing of change in the information and obtain written consent
- Breach of subrule (c) – failure to deliver to deliver account to the client at the end of the case

- Breach of subrule (d) – failure to deliver receipt to client for fees or costs and disbursements
- Breach of subrule (e) – failure to deliver backsheet to counsel
- Breach of subrule (f) – payment to counsel without receipt of a fee note
- Breach of subrule (g) – failure to retain copies of documents for at least two years after completion

### **SOLICITORS (PROFESSIONAL INDEMNITY) RULES**

- Failure to submit an accountant’s certificate under rule 8(1)(a)

### **CONTINUING PROFESSIONAL DEVELOPMENT RULES**

- Failure to comply with rule 5 (provided that the breach has already been rectified within a very short period after the date for compliance with the Rules)

### **PRACTICE DIRECTIONS**

#### **PD B.1 “Solicitors’ Bill of Costs**

- Failure to render an itemized bill to a client upon request

#### **PD C.3 “Steps to be taken in criminal matters**

- Breach of subparagraph (2) – failure to carry the confirmatory letter from the client when at court

#### **PD D.2 “Signature of post”**

- Breach of subparagraph (1) – failure to ensure letters in the course of professional practice are signed by an approved signatory

#### **PD D.5 “Sharing an office and staff”**

- Breach of subparagraph (4) – failure to have adequate signs in common areas

#### **PD D.7 “Cessation of practice**

- Breach of subparagraph (1) – failure to notify the Society 6 weeks prior to cessation date
- Breach of subparagraph (2) – failuer to appoint an agent

#### **PD D.8 “Format of electronic communications**

- Failure to comply with mandatory requirements set out in subparagraph (1)
- Breach of subparagraph (2) – issue of an e-mail by unapproved person

#### **PD F.1 “Instructions to counsel”**

- Breach of subparagraph (1) – failure to supply backsheet (see Solicitors’ Practice Rule 5D)

#### **PD G. “Professional stationery”**

- Breach of PD G.1(1) – failure to state the names of principals
- Breach of PD G.(1)(2) – failure to specify non-resident partners
- Breach of PD G.1A(1) – failure to state foreign lawyer’s jurisdiction

- Breach of PD G.2(1) – stating “PCLL” or similar on namecard

#### PD H.1 “Election addresses”

- Breach of subparagraph (2) – stating name or address of firm or advertising work as solicitor

### **FOREIGN LAWYERS PRACTICE RULES**

#### Rule 5 “Business letters”

- Failure to comply with the mandatory requirements set out in subrules (1) or (2)

#### Rule 6” Supervision of office”

- Breach of subrule (a) or requiring a foreign lawyer to be in attendance at the office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a foreign lawyer holding an unconditional certificate of registration

#### Rule 7 “Sharing an office and staff”

- Breach of subrule (4) – failure to have adequate signs in common areas

#### Rule 8 “Control of employment of unqualified persons

- Temporary breach of subrule (1) without having sought a waiver from the Council
- Breach of subrule (3) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

#### Rule 9 “Reporting of particulars

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

### **VOLUME 1 OF “THE HONG KONG SOLICITORS’ GUIDE TO PROFESSIONAL CONDUCT”**

#### Principle 13.09 “When an oath must not be administered”

- Administering an oath or affirmation or taking a declaration in proceeding or matter in which the solicitor or his firm is acting for any of the parties, or is otherwise interested

#### Principle 14.02 “Performance of undertakings”

- Breach of undertaking in conveyancing matters (provided that the breach has been rectified and is not continuing)

- (B) 廢除句號而代以“；或”；  
(iv) 加入——

“(c) 將有關事宜連同他認為適當的指示交回律師會或理事會重新考慮。”；

- (d) 加入——

“(12) 凡高等法院首席法官根據第(11)款(a)段維持律師會或理事會的決定，或根據該款(b)段指示律師會發出執業證書，高等法院首席法官的決定即為最終決定。”。

### 101. 執業為律師的資格

第7(d)條現予修訂，廢除“的任何”而代以“並對他適用的”。

### 102. 律師紀律審裁團

第9條現予修訂——

- (a) 在第(4)款中——

- (i) 廢除“審裁團內的其中”；  
(ii) 廢除“其他”；

- (b) 加入——

“(6) 律師會可向審裁組召集人及在第(5)款所述情況下署理審裁組召集人職位的審裁組副召集人支付酬金。”。

### 103. 對律師、外地律師等行為操守的申訴

第9A條現予修訂——

- (a) 加入——

“(1A) 儘管有第(1)款的規定，如有關的行為操守涉及指稱違反於理事會訂立的規則內訂明的——

- (a) 本條例的條文；  
(b) 由律師會發出的執業指引；或  
(c) 《香港事務律師專業操守指引》所載的專業操守原則，

- (B) by repealing the full stop and substituting “; or”;  
(iv) by adding—

“(c) remit the matter to the Society or Council for reconsideration with such directions as he thinks fit.”;

- (d) by adding—

“(12) Where the Chief Judge affirms a decision of the Society or Council under paragraph (a) of subsection (11) or directs the Society to issue a practising certificate under paragraph (b) of that subsection, the decision of the Chief Judge shall be final.”.

### 101. Qualifications for practising as solicitor

Section 7(d) is amended by adding “that apply to him” after “73A”.

### 102. Solicitors Disciplinary Tribunal Panel

Section 9 is amended—

- (a) in subsection (4)—

- (i) by repealing “one of the solicitors on the Panel” and substituting “a solicitor”;  
(ii) by repealing “of the other”;

- (b) by adding—

“(6) The Tribunal Convenor and a Deputy Tribunal Convenor who acts in the place of the Tribunal Convenor in circumstances mentioned in subsection (5) may be remunerated by the Society.”.

### 103. Complaint about conduct of solicitor, foreign lawyer, etc.

Section 9A is amended—

- (a) by adding—

“(1A) Notwithstanding subsection (1), if the conduct involves an alleged breach of—

- (a) a provision of this Ordinance;  
(b) a practice direction issued by the Society; or  
(c) a principle of professional conduct contained in The Hong Kong Solicitors' Guide to Professional Conduct,



而理事會認為有關事宜適宜由審裁組召集人根據第 9AB 條處理，則理事會可將該事宜呈交審裁組召集人，讓其於該條第(1)款所述條件獲得符合的情況下根據該條處理該事宜。

(1B) 理事會在考慮有關事宜是否適宜由審裁組召集人根據第 9AB 條處理時，可考慮以下因素——

- (a) 所指稱的違反事件是否蓄意；
  - (b) 作出所指稱的違反事件是否出於不誠實意圖；
  - (c) 所指稱的違反事件的嚴重程度；
  - (d) 理事會認為有關的任何其他因素。”；
- (b) 在第(2)款中，廢除“終審”而代以“高等”。

prescribed in rules made by the Council, and the Council considers that that matter is suitable for disposal by the Tribunal Convenor under section 9AB, the Council may submit the matter to the Tribunal Convenor for such disposal subject to the conditions mentioned in subsection (1) of that section being satisfied.

(1B) In considering whether a matter is suitable for disposal by the Tribunal Convenor under section 9AB, the Council may take into account the following—

- (a) whether the alleged breach is deliberate;
  - (b) whether the alleged breach has been committed with a dishonest intent;
  - (c) the gravity of the alleged breach;
  - (d) any other factor it considers relevant.”;
- (b) in subsection (2), by repealing “Chief Justice” and substituting “Chief Judge”.

#### 104. 加入條文

現加入——

##### “9AB. 審裁組召集人處理某些申訴的權力

(1) 凡理事會根據第 9A(1A) 條向律師紀律審裁團的審裁組召集人呈交關乎某人的事宜，而該人按照於理事會訂立的規則內訂明的方式——

- (a) 承認對指稱違反訂明條文、執業指引或專業操守原則一事的法律責任；及
- (b) 同意該事宜由審裁組召集人根據本條處理，則審裁組召集人須處理該事宜。

(2) 審裁組召集人處理一項事宜的方式，是作出命令，規定有關的人在命令指明的時間內支付於理事會訂立的規則內就違反有關的訂明條文、執業指引或專業操守原則而訂明的定額罰款及理事會的定額調查費用。

(3) 定額罰款須撥入政府一般收入內。

(4) 審裁組召集人須簽署根據本條作出的命令，並將已簽署的命令的文本送交律師會秘書長存檔。

#### 104. Section added

The following is added—

##### “9AB. Power of Tribunal Convenor to dispose of certain complaints

(1) The Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel shall dispose of a matter submitted under section 9A(1A) if the person in respect of whom the submission is made—

- (a) admits liability for the breach of a prescribed provision, practice direction or principle of professional conduct as alleged; and
- (b) agrees to the matter being disposed of by the Tribunal Convenor under this section,

in the manner prescribed in rules made by the Council.

(2) The Tribunal Convenor shall dispose of a matter by making an order requiring the person concerned to pay, within the time specified in the order, the fixed penalty and the Council’s fixed investigation costs prescribed in rules made by the Council for a breach of the relevant prescribed provision, practice direction or principle of professional conduct.

(3) The fixed penalty shall be paid into the general revenue.

(4) The Tribunal Convenor shall sign an order made under this section and file a copy of the signed order with the Secretary General of the Society.

## Proposed Alternative Disciplinary Procedure

### Background

The Council's disciplinary powers under the Legal Practitioners Ordinance (Cap 159) are limited by s 9A to receiving and investigating complaints, and referring them, where appropriate, for hearing before a Solicitors Disciplinary Tribunal. The power to admonish or censure solicitors is vested in the Tribunal and the Council is therefore caught between issuing letters of regret or disapproval, or referring the complaint for full hearing by a Solicitors Disciplinary Tribunal. The latter is time-consuming, can be extremely costly and may not be appropriate in certain situations.

Following a proposal by the Council, the Chief Justice has now approved a new, alternative procedure as an adjunct to the disciplinary process, to fill the gap between the issue of letters of regret or disapproval and the referral of matters for hearing by a Tribunal. The new scheme will enable respondents to be penalised a predetermined amount for each breach, with costs imposed up to a fixed maximum sum, rather than proceeding to a full hearing by a Tribunal, provided that:

- (a) the breach involves a particular specified offence;
- (b) both the Council and the respondent agree to the particular breach being dealt with summarily in this manner; and
- (c) the respondent pleads guilty to the breach.

The Council is confident that the proposed new scheme will

substantially reduce the delays and high costs that are inherent in the existing disciplinary system, where the costs element can be far in excess of any penalty imposed by the Tribunal.

### Expanded Powers of the Tribunal Convenor

To give effect to the proposed new system, the Tribunal Convenor (and his Deputies) will be granted additional powers to enable them to:

- (a) deal summarily with the standard penalty breaches, subject to both parties' consent, without having to convene a Tribunal;
- (b) impose standard fines for those breaches in accordance with a published tariff (proposed to be \$10,000 for each offence);
- (c) order payment by the respondent of the costs of and incidental to the prior inquiry or investigation in relation to the matter (up to a maximum proposed to be \$15,000 per offence); and
- (d) have the order filed with the Secretary General and available for inspection by any person affected.

It is intended that the Tribunal Convenor and his Deputies, when acting, will be remunerated for this new statutory function.

### Standard Penalty Breaches

The subsidiary legislation will specify the 'standard penalty breaches' which may be dealt with under the proposed system. However, breach of any particular matter on the list will

not automatically mean that a respondent will only be subject to a standard penalty if he pleads guilty. The Council will have discretion in the first instance as to whether a breach falling within that category may be dealt with summarily, and the respondent must then also consent to that procedure.

The Council may, for example, consent to a standard penalty breach being dealt with under the proposed procedure if the breach could be regarded as oversight, rather than as a deliberate act or omission. However, where the Council regarded a breach as more serious and did not consent to the case being dealt with under this procedure, the matter would be prosecuted in the usual way before a Tribunal. Similarly, a respondent would be entitled to defend himself in a full hearing before a Tribunal if he so wished.

### Procedure to be Set Out in Rules

Under the system as proposed, the respondent will be served with a complaint sheet stating the particulars of the alleged offence and brief facts. During a specified period, the respondent will be able to discuss with the prosecutor the complaints brought against him, the facts and, if applicable, the penalty which will apply if he pleads guilty and if he agrees to the matter being dealt with on a fixed penalty basis.

It is intended that the fixed penalty procedure will only be applicable at this point and will not be available if the respondent pleads guilty at any later stage.



THE  
**LAW SOCIETY**  
OF HONG KONG

香港律師會

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17 November 2003

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

Via Fax – 2509 9055  
& Via Post  
(Pages in total: 2 / )

Dear Mrs Ma,

Re : **Summary Disposal of Complaints (Solicitors) Rules**

Please find enclosed for the assistance of the Panel an advanced copy of the Summary Disposal of Complaints (Solicitors) Rules ("Rules"), which will be gazetted on 21 November 2003.

The Rules are introduced to implement a new alternative disciplinary system under which a fixed penalty will be imposed upon solicitors who plead guilty to certain disciplinary offences without the necessity to proceed to a full hearing. The necessary amendments to the Legal Practitioners Ordinance (contained in the Statute Law (Miscellaneous Provisions) Ordinance (Ordinance No.23 of 2002)) were gazetted in July 2002. They are included in sections 103(a), 104, 105 and 111 of the Statute Law (Miscellaneous Provisions) Ordinance, which shall come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette, pending the passing of the new set of subsidiary rules to implement the alternative disciplinary procedures.

To summarise, the amendments to the Ordinance are:

- (a) Alternative disciplinary procedures
- (i) New section 9A(1A) sets out the scope of the matters that may be dealt with under the new alternative disciplinary procedures whereby a matter can be disposed of by imposition of a fixed penalty if certain conditions are met.

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## The Law Society of Hong Kong

- (ii) New section 9A(1B) sets out the factors that may be taken into account by the Society when considering whether a matter is suitable for disposal by the Tribunal Convenor under the new procedures.
  - (iii) New section 9AB sets out the power of the Tribunal Convenor to dispose of matters under the new procedures.
  - (iv) Amendments have been made to sections 9B(1) and (1A) to clarify that if the matter is to be disposed of by the Tribunal Convenor under the new procedures, the Tribunal Convenor shall not be required to constitute a Tribunal.
- (b) Enabling provisions

The new sub-section 73(1)(caa) and (cab) are added to provide the Council with the necessary power to make rules in relation to the new alternative disciplinary procedures.

The Rules set out the procedure that will be adopted when the Council decides to submit a matter to the Tribunal Convenor for disposal under the alternative disciplinary procedures. The procedure is summarised as follows:

- (a) The Council representative shall send to the relevant person a complaint sheet, a summary of facts and a notice explaining the applicable procedures and setting out the amounts of the fixed penalty and fixed investigation costs if the matter is disposed of under the summary procedures.
- (b) The relevant person has 21 days to consider whether he wishes to discuss the matter with the Council representative.
- (c) If the relevant person agrees to enter into discussion with the Council representative, then they will have 21 days to discuss and agree in writing the facts of the case.
- (d) The Council representative will then sign a statement of agreed facts on behalf of the Council and send it to the relevant person, who has 14 days to sign and return it together with his indication that he admits liability and agrees to have the matter disposed of under the new summary procedures.
- (e) The Council will then make a submission to the Tribunal Convenor stating that the conditions to have the matter disposed of under the new procedures have been satisfied. It will also submit an affidavit exhibiting the signed statement of agreed facts.
- (f) After receiving the submission, the Tribunal Convenor shall make an order and send it to the relevant person.

**The Law Society of Hong Kong**

- (g) The offences that may be dealt with by the summary procedures and the fixed amounts of penalty and investigation costs are all set out in the Rules. A list briefly explaining the nature of each of the offences covered by the Rules is also enclosed.

Please do not hesitate to let me know should you require further information.

Yours sincerely,



Heidi Chu  
Director  
Standards and Development

c.c. Mr Patrick Moss, Secretary General

Encl  
72650

**SUMMARY DISPOSAL OF COMPLAINTS (SOLICITORS)  
RULES**

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## SUMMARY DISPOSAL OF COMPLAINTS (SOLICITORS) 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)

### PART 1

#### PRELIMINARY

##### 1. Commencement

These Rules shall come into operation on the day appointed for the commencement of section 111 of the Statute Law (Miscellaneous Provisions) Ordinance 2002 (23 of 2002).

##### 2. Interpretation

In these Rules, unless the context otherwise requires -

“affidavit” (誓章) includes affirmation;

“Council representative” (理事會代表) means a solicitor or counsel appointed by the Council to represent it in the handling of a matter regarding the conduct of a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer;

“fixed investigation cost” (定額調查費用), in relation to a scheduled item, means the Council's fixed investigation cost specified opposite the item in column 4 of the Schedule;

“fixed penalty” (定額罰款), in relation to a scheduled item, means the fixed penalty specified opposite the item in column 3 of the Schedule;

“relevant person” (有關人士) means a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer, to whom a complaint sheet has been sent under section 4;



“scheduled item” (表列項目) means a provision, practice direction or principle of professional conduct specified in column 2 of the Schedule;

“Tribunal Convenor” (審裁組召集人) means the Tribunal Convenor appointed under section 9(4) of the Ordinance.

**3. Provisions prescribed for purposes of section 9A(1A) of Ordinance**

The provisions, practice directions and principles of professional conduct specified in column 2 of the Schedule are prescribed for the purposes of section 9A(1A) of the Ordinance.

**PART 2**

**PROCEDURES BEFORE SUBMISSION OF MATTER TO TRIBUNAL CONVENOR**

**4. Council representative to send complaint sheet when Council decides to submit matter to Tribunal Convenor**

(1) If the Council decides to submit a matter regarding the conduct of a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer to the Tribunal Convenor under section 9A(1A) of the Ordinance, the Council representative shall send to the solicitor, foreign lawyer, trainee solicitor or employee a complaint sheet stating the particulars of the complaint together with a summary of facts relating to the conduct being complained of.

(2) The complaint sheet shall be sent together with a notice -

- (a) stating that the relevant person's conduct involves an alleged breach of a scheduled item and that the Council has decided to submit the matter to the Tribunal Convenor under section 9A(1A) of the Ordinance and that accordingly -

- (i) if the relevant person admits liability for the alleged breach and agrees to the matter being disposed of by the Tribunal Convenor under section 9AB of the Ordinance, the matter shall be so disposed of by the Tribunal Convenor and the relevant person shall be only liable to pay a fixed penalty and a fixed investigation cost; and
  - (ii) if the relevant person does not admit liability for the alleged breach or does not agree to the matter being disposed of by the Tribunal Convenor, the matter shall be disposed of by the Solicitors Disciplinary Tribunal; and
- (b) requiring the relevant person to notify the Council representative in writing within 21 days after receiving the complaint sheet whether or not the relevant person wishes to discuss the matter with the Council representative.
- (3) The amounts of the fixed penalty and the fixed investigation cost referred to in subsection (2)(a)(i) shall be specified in the notice.

#### **5. Revocation of decision by Council**

(1) Notwithstanding the sending of a complaint sheet to a relevant person under section 4, the Council may at any time within 21 days thereafter revoke its decision to submit the matter to the Tribunal Convenor under section 9A(1A) of the Ordinance.

(2) Upon revoking its decision, the Council shall forthwith notify the relevant person in writing of this fact.

#### **6. Discussion of complaint**

Unless the Council has revoked its decision to submit the matter to the Tribunal Convenor in accordance with section 5, if a relevant person notifies the

Council representative that he wishes to discuss the matter, the Council representative and the relevant person have a period of 21 days beginning on the day after the receipt of the notification by the Council representative to discuss and agree in writing the facts of the case.

**7. Amendment of complaint sheet, etc.**

At the end of the period referred to in section 6, if the Council representative considers that the agreed facts are sufficient to establish the liability of the relevant person, he -

- (a) may amend the complaint sheet, if necessary; and
- (b) shall prepare a statement of the agreed facts and sign the statement on behalf of the Council,

and send the complaint sheet or amended complaint sheet (as appropriate) and the statement of agreed facts to the relevant person.

**8. Agreeing to disposal of matter by Tribunal Convenor**

If a relevant person wishes to have a matter disposed of by the Tribunal Convenor under section 9AB of the Ordinance, he shall, within 14 days after receiving the statement of agreed facts, sign and return the statement to the Council representative and indicate in writing that he admits liability for the breach of the scheduled item as alleged and agrees to the matter being disposed of by the Tribunal Convenor under that section.

## PART 3

### SUBMISSION OF MATTER TO AND DISPOSAL OF MATTER BY TRIBUNAL CONVENOR

#### 9. Application of Part 3

(1) This Part applies in relation to a matter regarding the conduct of a relevant person if the relevant person -

- (a) admits liability for the breach of the scheduled item as alleged;
- (b) agrees to the matter being disposed of by the Tribunal Convenor under section 9AB of the Ordinance; and
- (c) signs and returns the statement of agreed facts,

within the time prescribed in section 8.

(2) In any other case, the Solicitors Disciplinary Tribunal Proceedings Rules (Cap. 159 sub. leg.) apply but any information obtained by the relevant person or the Council in the course of or as a result of the discussion of the matter under section 6 may not be used by the relevant person or the Council as evidence in any proceedings against the relevant person under those Rules unless the party against whom the information is proposed to be used consents in writing to the information being so used.

#### 10. Submission of matter to Tribunal Convenor

(1) A submission to the Tribunal Convenor to dispose of a matter under section 9AB of the Ordinance shall -

- (a) be in writing and signed on behalf of the Council by the Secretary General of the Society or by such other person as the Council may from time to time appoint;
- (b) state that the conditions mentioned in subsection (1) of that section that have to be satisfied before the Tribunal

Convenor can dispose of the matter have been satisfied;  
and

- (c) be accompanied by an affidavit sworn by the Secretary General of the Society or by such other person as the Council may from time to time appoint.

(2) The affidavit referred to in subsection (1)(c) shall state -

- (a) the capacity of the deponent;
- (b) the deponent's means of knowledge of the facts; and
- (c) the pertinent information about the relevant person,

and shall exhibit the statement of agreed facts signed by the Council and the relevant person.

(3) The Council shall, at the same time as it makes a submission to the Tribunal Convenor, send a copy of the submission to the relevant person.

#### **11. Sending order to relevant person**

(1) As soon as practicable after receiving a submission, the Tribunal Convenor shall make an order under section 9AB(2) of the Ordinance.

(2) The Tribunal Convenor shall send the order to the relevant person within 7 days of its making.

### **PART 4**

#### **GENERAL**

#### **12. Correction of errors in orders**

(1) Where there is a clerical error in an order made under section 9AB(2) of the Ordinance, the Tribunal Convenor may, on his own initiative or on the application of the Council or the relevant person against whom the order was made, correct the error in the order and may for that purpose require the relevant person to produce the order to him for correction.

(2) The Tribunal Convenor shall file a copy of an amended order with the Secretary General of the Society.

### 13. Sending documents

(1) Any document to be sent (however described) to any person under these Rules is regarded as duly sent if it is –

- (a) delivered to that person personally; or
- (b) left at or sent by registered post to the last known place of business or abode of that person.

(2) Where the person to whom a document is to be sent is a solicitor or a foreign lawyer and that person either agrees to accept service through a document exchange or states his document exchange number on his letterhead, the document is also regarded as duly sent if it is left at that document exchange or at a document exchange that transmits documents every business day to that document exchange. A document so left is regarded to have been received on the day on which it is left.

(3) In this section, "business day" (工作天) and "document exchange" (文件轉遞處) have the meanings respectively assigned to them by Order 65, rule 5 of the Rules of the High Court (Cap. 4 sub. leg.).

## SCHEDULE

[ss. 2 & 3]

### SCHEDULED ITEMS

#### Legal Practitioners Ordinance (Cap. 159)

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Section 8(1)	10,000	15,000

**Solicitors' Practice Rules (Cap. 159 sub. leg.)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Rule 2B(2)	10,000	15,000
2.	Rule 2B(3)	10,000	15,000
3.	Rule 4A(a)	10,000	15,000
4.	Rule 4A(b)	10,000	15,000
5.	Rule 4B(1)	10,000	15,000
6.	Rule 4B(2)	10,000	15,000
7.	Rule 4B(4)	10,000	15,000
8.	Rule 5(1)	10,000	15,000
9.	Rule 5(1A)	10,000	15,000
10.	Rule 5(2)	10,000	15,000
11.	Rule 5(3)	10,000	15,000
12.	Rule 5D(a)	10,000	15,000
13.	Rule 5D(b)	10,000	15,000
14.	Rule 5D(c)	10,000	15,000
15.	Rule 5D(d)	10,000	15,000
16.	Rule 5D(e)	10,000	15,000
17.	Rule 5D(f)	10,000	15,000
18.	Rule 5D(g)	10,000	15,000

**Solicitors (Professional Indemnity) Rules  
(Cap. 159 sub. leg.)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Rule 8(1)(a)	10,000	15,000

**Foreign Lawyers Practice Rules (Cap. 159 sub. leg.)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Section 5(1)	10,000	15,000
2.	Section 5(2)	10,000	15,000
3.	Section 6(a)	10,000	15,000
4.	Section 6(b)	10,000	15,000
5.	Section 7(4)	10,000	15,000
6.	Section 8(1)	10,000	15,000
7.	Section 8(3)	10,000	15,000
8.	Section 9(1)	10,000	15,000
9.	Section 9(1A)	10,000	15,000
10.	Section 9(2)	10,000	15,000
11.	Section 9(3)	10,000	15,000

**Continuing Professional Development Rules  
(Cap. 159 sub. leg.)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Section 5(1)	10,000	15,000
2.	Section 5(2)	10,000	15,000

**Practice Directions 1990 issued by the Society**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Practice Direction B1	10,000	15,000
2.	Practice Direction C3, paragraph (2)	10,000	15,000
3.	Practice Direction D2, paragraph (1)	10,000	15,000
4.	Practice Direction D5, paragraph (4)	10,000	15,000
5.	Practice Direction D7, paragraph (1)	10,000	15,000
6.	Practice Direction D7, paragraph (2)	10,000	15,000



7.	Practice Direction D8, paragraph (1)	10,000	15,000
8.	Practice Direction D8, paragraph (2)	10,000	15,000
9.	Practice Direction F1, paragraph (1)	10,000	15,000
10.	Practice Direction G1, paragraph (1)	10,000	15,000
11.	Practice Direction G1, paragraph (2)	10,000	15,000
12.	Practice Direction G1A, paragraph (1)	10,000	15,000
13.	Practice Direction G2, paragraph (1)	10,000	15,000
14.	Practice Direction H1, paragraph (2)	10,000	15,000

**The Hong Kong Solicitors' Guide to Professional Conduct**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Principle 13.09	10,000	15,000
2.	Principle 14.02	10,000	15,000

Approved this 23rd day of October 2003.

*Andrew Li*

Chief Justice

Made this 13th day of November 2003.

*Ip Shing Hing*

Ip Shing Hing

*Anson K.C. Kan*

Anson K.C. Kan

Denis G. Brock

Anthony W.K. Chow

Junius K.Y. Ho

Lester G. Huang

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Peter C.L. Lo

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Kenneth S.Y. Ng

Timothy C. Parkes

Herbert H.K. Tsoi

Wong Kwai Huen

Cecilia K.W. Wong

**Explanatory Note**

The object of these Rules is to provide for the practice and procedure to be followed in connection with the disposal of a complaint against a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer by the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel ("Tribunal Convenor") under section 9AB of the Legal Practitioners Ordinance (Cap. 159).

2. Section 3 of the Rules prescribes provisions, practice directions and principles of professional conduct for the purposes of section 9A(1A) of that Ordinance. Where the conduct of a person being complained of involves a breach of any such provisions, practice directions and principles, the Council of The Law Society of Hong Kong ("Council") may submit the complaint to the Tribunal Convenor for disposal.

3. Sections 4 to 8 set out the procedures to be followed before a complaint is formally submitted to the Tribunal Convenor. These include, inter alia, the sending of a complaint sheet and summary of facts to the person whose conduct is being complained of ("relevant person"), the discussion between the representative of the Council and the relevant person to agree on the facts, the preparation of a statement of agreed facts and the relevant person giving his written consent to the disposal of the complaint by the Tribunal Convenor.

4. Sections 9 to 11 deal with the submission of complaints by the Council to the Tribunal Convenor and the sending of orders made by the Tribunal Convenor to relevant persons.

5. Sections 12 and 13 deal with the correction of errors in orders and the sending of documents.

**OFFENCES WHICH MAY BE DEALT WITH  
UNDER THE DISPOSAL OF COMPLAINTS (SOLICITORS) RULES**

**LEGAL PRACTITIONERS ORDINANCE**

**Section 8(1) "Accountant's reports"**

- Failure to submit an accountant's report within the prescribed time limit

**SOLICITORS' PRACTICE RULES**

**Rule 2B "Letterhead"**

- Failure to comply with mandatory requirements on what should be stated on a firm's letterhead, as set out in subrule (2)
- Where a firm opts to state on its letterhead any of the matters set out in subrule (3), failure to satisfy the pre-conditions to do so

**Rule 4A "Supervision of office"**

- Breach of subrule (a) requiring a solicitor with a practising certificate to be in attendance at an office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a solicitor holding an unconditional practising certificate

**Rule 4B "Control of employment of unqualified persons"**

- Breach of the ratio of unqualified person to solicitors in subrule (1) without having sought a waiver from the Council
- Breach of subrule (2) by knowingly employing an unqualified person who is also employed by another firm without Council approval
- Breach of subrule (4) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

**Rule 5 "Particulars relating to firms"**

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

**Rule 5D "Steps to be taken in criminal matters"**

- Breach of subrule (a) - failure to issue a confirmation letter to the client
- Breach of subrule (b) - failure to notify the client in writing of change in the information and obtain written consent
- Breach of subrule (c) - failure to deliver an account to the client at the end of the case
- Breach of subrule (d) - failure to deliver receipt to client for fees or costs and disbursements
- Breach of subrule (e) - failure to deliver backsheets to counsel

- Breach of subrule (f) - payment to counsel without receipt of a fee note
- Breach of subrule (g) - failure to retain copies of documents for at least two years after completion

### **SOLICITORS (PROFESSIONAL INDEMNITY) RULES**

- Failure to submit an accountant's certificate under rule 8(1)(a)

### **CONTINUING PROFESSIONAL DEVELOPMENT RULES**

- Failure to comply with the requirement to accumulate sufficient continuing professional development accreditation points, as set out in rule 5

### **FOREIGN LAWYERS PRACTICE RULES**

#### **Rule 5 "Business letters"**

- Failure to comply with the mandatory requirements on what should be stated on the firm's letterhead, as set out in subrules (1) or (2)

#### **Rule 6 "Supervision of office"**

- Breach of subrule (a) requiring a foreign lawyer to be in attendance at the office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a foreign lawyer holding an unconditional certificate of registration

#### **Rule 7 "Sharing an office and staff"**

- Breach of subrule (4) - failure to have adequate signs in common areas

#### **Rule 8 "Control of employment of unqualified persons"**

- Breach of the ratio between persons who are not foreign lawyers and resident partners and full-time foreign lawyers, as set out in subrule (1) without having sought a waiver from the Council
- Breach of subrule (3) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

#### **Rule 9 "Reporting of particulars"**

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

## PRACTICE DIRECTIONS

### PD B.1 "Solicitors' Bill of Costs"

- Failure to render an itemized bill to a client upon request

### PD C.3 "Steps to be taken in criminal matters"

- Breach of subparagraph (2) - failure to carry the confirmatory letter from the client when at court

### PD D.2 "Signature of post"

- Breach of subparagraph (1) - failure to ensure letters in the course of professional practice are signed by an approved signatory

### PD D.5 "Sharing an office and staff"

- Breach of subparagraph (4) - failure to have adequate signs in common areas

### PD D.7 "Cessation of practice"

- Breach of subparagraph (1) - failure to notify the Society 6 weeks prior to cessation date
- Breach of subparagraph (2) - failure to appoint an agent

### PD D.8 "Format of electronic communications"

- Failure to comply with mandatory requirements on what should be stated on electronic communications, set out in subparagraph (1)
- Breach of subparagraph (2) - issue of an e-mail by unapproved person

### PD F.1 "Instructions to counsel"

- Breach of subparagraph (1) - failure to supply backsheet (see Solicitors' Practice Rule 5D)

### PD G. "Professional stationery"

- Breach of PD G.1 (1) - failure to state the names of principals on business letters
- Breach of PD G.1 (2) - failure to specify non-resident partners on business letters
- Breach of PD G.1A (1) - failure to state foreign lawyer's jurisdiction
- Breach of PD G.2 (1) - stating "PCLL" or similar "qualification" on name card

### PD H.1 "Election addresses"

- Breach of subparagraph (2) - stating name or address of firm or advertising work as solicitor during election to public office

**VOLUME 1 OF "THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT"**

**Principle 13.09 "When an oath must not be administered"**

- Administering an oath or affirmation or taking a declaration in a proceeding or matter in which the solicitor or his firm is acting for any of the parties, or is otherwise interested

**Principle 14.02 "Performance of undertakings"**

- Breach of undertaking in conveyancing matters