



THE  
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 OF HONG KONG  
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HC/sp/CWP160

2846 0523

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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- (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.

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- (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**

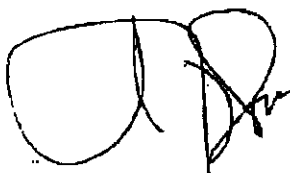
Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Principle 13.09	10,000	15,000
2.	Principle 14.02	10,000	15,000


Approved this 23rd day of October 2003.

*Andrew Li*

Chief Justice

Made this 13th day of November 2003.

  
Ip Shing Hing

  
Anson K.C. Kan

Denis G. Brock

Anthony W.K. Chow

Junius K.Y. Ho

Lester G. Huang

Amy Y.K. Liu

Peter C.L. Lo

Billy W.Y. Ma

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