

SOLICITOR CORPORATIONS RULES

(Cap.159, Section [73])

1. Interpretation

In these Rules, unless the context otherwise requires—

"firm" means a firm as from time to time constituted, whether of a sole practitioner or as a partnership, carrying on the business of practising as a solicitor or as solicitors and whether conducted from one address or more than one address;

"Practice" means the business of practising as a solicitor (including the acceptance of obligations connected with and incidental to such practice as trustee, executor, attorney acting under a power of attorney, notary, tax agent, agent for patents, agent for trade marks, company secretary or company director) undertaken by the solicitor corporation, provided always that wherever any fees or other income accrue therefrom they inure to the benefit of that business;

"solicitor corporation" means a solicitor corporation approved by the Society under section 7C(1) of the Ordinance.

2. Application for approval under section 7C(1) of the Ordinance

(1) Any person who wishes to have a company or a proposed company approved as a solicitor corporation under section 7C(1) of the Ordinance shall apply to the Society.

(2) An application made under subrule (1) shall be in Form 1 in the Schedule.

(3) When an application is made under subrule (1), there shall at the same time be paid to the Society such fee as is prescribed by the Solicitor Corporations (Fees) Rules.

(4) On receiving an application made under subrule (1), the Society may, in accordance with these rules, approve or refuse to approve the company or proposed company as a solicitor corporation.

(5) Before approving a company or proposed company as a solicitor corporation, the Council shall be satisfied that the company or proposed company satisfies or will satisfy the qualifications for approval as a solicitor corporation and that such approval is not, in the opinion of the Council, contrary to the interests of the public.

(6) If the Society gives approval for a proposed company to be a solicitor corporation, the approval does not take effect until the company is formed and registered under the Companies Ordinance (Cap.32).

(7) Any approval given by the Society pursuant to subrule (4) may be withdrawn by the Society at any time if the continuance of such approval is, in the opinion of the Council, contrary to the interests of the public or if the relevant solicitor corporation ceases for any reason to be qualified for approval under rule 3 or otherwise.

(8) Any approval given by the Society with respect to a solicitor corporation pursuant to subrule (4) shall expire where—

- (a) a winding-up order under the Companies Ordinance (Cap 32) is made by the High Court with respect to such solicitor corporation;
- (b) a resolution for voluntary winding-up is passed with respect to such solicitor corporation; or
- (c) a person is appointed receiver or manager of the property of such solicitor corporation.

3. Qualification for approval as a solicitor corporation

(1) Subject to the discretion of the Council pursuant to rule 2(5), a company is qualified to be approved as a solicitor corporation if—

- (a) it is a company limited by shares and formed and registered under the Companies Ordinance (Cap 32);
- (b) all the members of the company are directors or employees of the company;
- (c) all the directors of the company are members or employees of the company;
- (d) subject to subrule (2), every member and every director of the company is an individual:
 - (i) who is a solicitor holding a current practising certificate which is not subject to any condition other than the condition that he shall comply with the Continuing Professional Development Rules and any other continuing legal education rules made under section 73 of the Ordinance; and
 - (ii) who is employed in the practice of a solicitor or a solicitor corporation in Hong Kong or who is practising as a solicitor on his own account or in partnership in Hong Kong or who is a member or director of a solicitor corporation or has been in any

such employment or practice or has been a member or director of a solicitor corporation not more than 12 months prior to his becoming a member or director of the company;

- (e) subject to subrules (2) and (3), every member of the company beneficially owns the share or shares he holds in the company;
- (f) the name of the company is in compliance with rules 6(1), (2), (4) and (5) and the company does not conduct its Practice under any other name; and
- (g) the memorandum and articles of association of the company are in compliance with the requirements of the Companies Ordinance (Cap.32) and these rules.

(2) To enable a sole practitioner to establish a solicitor corporation under section 7C(1) of the Ordinance and to comply with the requirements of the Companies Ordinance (Cap.32) that a company formed thereunder must have two members and two directors, a company may have—

- (a) as the second member any other individual person, whether a solicitor or not, who is eligible under the Companies Ordinance (Cap.32) and who is not a member director or employee of another solicitor corporation, or a corporation approved for the purpose by the Council; and
- (b) as the second director any other individual person, whether a solicitor or not, who is eligible under the Companies Ordinance (Cap. 32) and who is not a member director or employee of another solicitor corporation

provided that—

- (i) the company shall at all times be managed and controlled by the sole practitioner;
- (ii) no person shall be appointed and act as the second member or the second director referred to above unless such second member or second director shall have been approved by the Council, which approval shall only be given upon an application in writing made to it by the sole practitioner or the company and subject to such conditions as the Council may think fit, if any,
- (iii) not more than one share of the company may be registered in the name of such second member who shall hold such share in trust for the sole practitioner; and
- (iv) such second member shall have executed a declaration of trust in favour of the sole practitioner in respect of the one share in the company which he or it holds in trust for the sole practitioner and

the person who lodges an application under rule 2 shall furnish a copy of such declaration of trust to the Society.

(3) If the second member mentioned in subrule (2) ceases to hold the one share in the company in trust for the sole practitioner mentioned in subrule (2), such sole practitioner and the company shall procure that:

- (a) another individual person, whether a solicitor or not, who is eligible under the Companies Ordinance (Cap.32) and who is not a member director or employee of another solicitor corporation, or a corporation approved for the purpose by the Council, shall become a member of the company holding one share in the company within 6 months from the date on which such second member ceases to hold the one share in the company; and
- (b) an individual person or a corporation as aforesaid who or which shall become a holder of that one share in the company pursuant to subrule (3)(a) shall execute a declaration of trust in favour of such sole practitioner in respect of such share which he or it holds in trust for the sole practitioner and such sole practitioner shall furnish a copy of such declaration of trust to the Society within 6 months from the date on which such second member ceases to hold such share; and
- (c) the provisions in subrules (2)(i) and (ii) shall continue to apply to the company.

(4) If the second director of the company mentioned in subrule (2) ceases to act as such, the company shall procure that another individual person, whether a solicitor or not, who is eligible under the Companies Ordinance (Cap.32) shall become a second director of the company within 2 months from the date on which such second director ceases to act as a director of the company.

(5) The Council may waive any of the requirements of subrule (1) where it considers it appropriate in the particular case.

4. Conduct of solicitor corporation

(1) The business of a solicitor corporation shall be limited to carrying on the Practice.

(2) A solicitor corporation shall at all times be managed and controlled by a solicitor or solicitors.

(3) A solicitor corporation shall at all times comply with these rules, including, in particular, rule 3(1), subject to any waiver of any of the requirements of rule 3(1) by the Council under rule 3(5).

(4) For the purpose of attending and voting at meetings, a member of a solicitor corporation shall not appoint as a proxy any person other than a solicitor who is a

member, officer or employee of the solicitor corporation.

(5) A solicitor corporation shall provide the Society with a copy of all the documents it is required to submit to the Companies Registry under the Companies Ordinance (Cap.32) at or before the time limit provided for in the Companies Ordinance (Cap.32).

(6) A member, director or an employee of a solicitor corporation who is a solicitor, whether he holds a current practising certificate or not, shall not without the prior written consent of the Council—

- (a) hold in any capacity whatsoever including that of trustee, or own beneficially any interest in any share in any other solicitor corporation;
- (b) be or act as a director, consultant or employee of any other solicitor corporation;
- (c) be or act as a partner, consultant or employee of a firm; or
- (d) practise as a solicitor on his own account.

(7) These rules shall not operate to affect the applicability to a solicitor of any laws, enactments, rules, regulations, practice directions and codes of conduct relating to the practice of a solicitor by virtue only of the fact that the solicitor is practising as a solicitor in his capacity as a director, consultant or employee of a solicitor corporation.

5. Shares in solicitor corporation

(1) Subject to rules 3(2) and (3), a member of a solicitor corporation shall not hold any share in the solicitor corporation for another person. At all times the shares in a solicitor corporation must be held by members who are solicitors and who beneficially own the shares.

(2) A member of a solicitor corporation shall not create any charge or other third party interest over any share in the solicitor corporation.

- (3) (a) Where a member of a solicitor corporation dies, the solicitor corporation shall ensure that any share or shares registered in his name at the time of his death is or are within 24 months of his death registered in the name of a solicitor who satisfies the requirements set out in rule 3(1)(d) or is or are repurchased by the solicitor corporation itself.
- (b) A solicitor who satisfies the requirements set out in rule 3(1)(d) and who is the personal representative of a deceased member of a solicitor corporation may elect to be entered in the register of members of the solicitor corporation but no member shall hold any share or shares as personal representative for longer than 24 months from the date of the

death of the deceased member.

- (c) Where a beneficial owner of a share or shares in a solicitor corporation who is not the registered holder of such share or shares dies, a member may continue to hold such share or shares for the personal representative of the deceased for a period of not longer than 24 months from the date of the death, provided that voting rights shall only be exercised in respect of any share or shares held in reliance on this sub-paragraph where the only personal representative in respect of the deceased's beneficial interest in the share or shares is a solicitor and who satisfies the requirements set out in rule 3(1)(d).
- (4) (a) In respect of a member of a solicitor corporation, where the name of such member is removed from or struck off the roll of solicitors or where such member becomes bankrupt, any share or shares registered in the name of such member may, notwithstanding rule 3(1)(d), remain so registered for a period of not longer than 6 months from the date of the relevant event, provided that no voting rights shall be exercised in respect of any such share or shares while it remains so registered.
- (b) In respect of a beneficial owner of a share or shares in a solicitor corporation who is not the registered holder of such shares or shares, where the name of such beneficial owner is removed from or struck off the roll of solicitors or where such beneficial owner becomes bankrupt, the member who holds such share for the beneficial owner may continue to hold such share for the beneficial owner or, as the case may be, his trustee in bankruptcy for a period of not longer than 6 months from the date of the relevant event, provided that no voting rights shall be exercised in respect of any such share or shares held in reliance on this sub-paragraph.
- (c) In respect of a member of a solicitor corporation, where such member is suspended from practice by an order of a Solicitors Disciplinary Tribunal, any share or shares registered in the name of such member may, notwithstanding rule 3(1)(d)(i), remain so registered for a period of not longer than 6 months from the date of the relevant event, provided that no voting rights shall be exercised in respect of any such share or shares while it remains so registered.
- (5) A member of a solicitor corporation shall not exercise any voting rights in respect of any share held in breach of any part of this rule and any vote tendered in breach of this paragraph or any other part of these rules shall not be accepted by the solicitor corporation.
- (6) A solicitor corporation shall so far as possible ensure that its members comply with this rule.

6. Name and memorandum and articles of association of solicitor corporation

(1) Subject to subrules (2) and (4), the name of a solicitor corporation shall consist solely of the name or names of one or more solicitors who are members of the solicitor corporation.

(2) Subrule (1) shall not preclude—

- (a) the use of the name or names of one or more former members of that corporation;
- (b) the use of the name or part of the name of any predecessor firm or predecessor solicitor corporation in practice at the time of the formation of the corporation;
- (c) the use of the word "solicitor", "notary", "agent for trade marks" or "agent for patents" whether in the singular or the plural; or
- (d) the use of a name approved in writing by the Council.

(3) For the purposes of subrule (2), a firm shall be deemed a predecessor firm of a solicitor corporation if not less than one-third of the principals of such firm immediately prior to the formation of the solicitor corporation are members of the solicitor corporation at the time of its formation, and a solicitor corporation shall be deemed a predecessor solicitor corporation if not less than one-third of the members of such solicitor corporation immediately prior to the formation of the solicitor corporation in question are members of the solicitor corporation in question at the time of its formation.

(4) The name of a solicitor corporation must have the word "limited" as its last word.

(5) The name of a solicitor corporation shall not—

- (a) be the same as or, in the opinion of the Council, so similar to a name appearing on the roll of solicitor corporations kept by the Secretary General of the Society under section 71 of the Ordinance as to be likely to cause confusion to the public;
- (b) be the same as or, in the opinion of the Council, so similar to the name of a solicitor corporation which has been approved by the Society under rule 2(4) prior to the application in respect of the first-mentioned solicitor corporation under rule 2(1) or subrule (8) as to be likely to cause confusion to the public;
- (c) be the same as or, in the opinion of the Council, so similar to the name of a firm which has been established prior to the application in respect of the solicitor corporation under rule 2(1) or subrule (8) as to be likely to cause confusion to the public; or

(d) in the opinion of the Council, be offensive or otherwise contrary to the interests of the solicitors' profession.

(6) The memorandum of association of a solicitor corporation shall provide that its object is to carry on the business of practising as a solicitor and its object shall be limited to such.

(7) The articles of association of a solicitor corporation shall not contravene any of the provisions of these rules.

(8) A solicitor corporation which wishes to change its name or amend its memorandum or articles of association shall apply to the Society for approval in a form approved by the Society, accompanied by such documents and fee as the Society may require or prescribe.

(9) Any new name which a solicitor corporation proposes to adopt must be in compliance with subrules (1), (2), (4) and (5).

(10) Any amendment to the memorandum or articles of association of a solicitor corporation must not contravene any of the provisions of the Companies Ordinance (Cap.32) or these rules.

(11) The Society may refuse to approve an application made under subrule (8) but only as provided by these rules.

(12) Where a solicitor corporation has been approved under rule 2(4) with a name which—

- (a) is the same as or, in the opinion of the Council, too like a name appearing on the roll of solicitor corporations kept by the Secretary General of the Society under section 7I of the Ordinance;
- (b) is the same as or, in the opinion of the Council, too like a name which should have appeared on that roll of solicitor corporations at that time;
or
- (c) is the same as, or in the opinion of the Council, too like the name of a solicitor corporation which has been approved by the Society under rule 2(4) prior to the approval of the solicitor corporation concerned,

the Council may within 12 months of the approval of the solicitor corporation concerned, in writing, direct the solicitor corporation to change its name within such period as the Council may specify.

(13) The Society may withdraw the approval given under rule 2(4) in respect of a solicitor corporation if such solicitor corporation fails to comply with a direction under subrule (12).

7. Certificate of approval

A certificate of approval issued by the Society pursuant to section 7C(1) of the Ordinance shall be valid as from the date shown on the certificate as the date of issue until such certificate is revoked.

8. Right of appeal against decisions of Society under these rules

(1) The grounds for refusal of an application made to the Council under these Rules shall be provided in writing to the applicant within 28 days of such refusal;

(2) An appeal against a decision of the Society under these rules shall lie to the Chief Judge within one month of the applicant being informed of this decision. The decision of the court on any such appeal shall be final.

(3) In any appeal under subrule (1) the Society shall be the respondent.

(4) The hearing of every appeal under this rule shall be in open court unless, and to the extent to which, the Court otherwise directs.

SCHEDULE

FORM 1

**FORM OF APPLICATION FOR APPROVAL OF A
SOLICITOR CORPORATION**

1. Name of Corporation/Proposed Corporation

hereby applies to the Law Society for approval as a solicitor corporation pursuant to Section 7C(1) of the Legal Practitioners Ordinance.

2. The applicant is a company limited by shares.

3. The address of the applicant is : -

4. The registered office of the applicant is : - (if different from 3 above)

5. The solicitors who are/will be members of the applicant are : -

<u>Surname</u>	<u>Forenames</u>	<u>Current Practising Address</u>
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6. The solicitors who are/will be directors of the applicant are : -

<u>Surname</u>	<u>Forenames</u>	<u>Current Practising Address</u>
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7. Interests in shares held by nominees are as follows : -

a) ----- (full name of member) holds
----- (number) shares as nominee for

(full name of beneficial owner) who is a solicitor of

----- (full practising address)

b) ----- (full name of member)
holds ----- (number) shares as nominee for

(full name of beneficial owner) who is a solicitor of

----- (full practising address)

Declaration of Compliance

It is declared that : -

i) the applicant complies with Rule 3-6 and its members comply with Rules 3-5; and

ii) the memorandum and articles of association of the applicant are such as to enable it

a) to continue to comply with Rules 3-6; and

- b) so far as possible to ensure continued compliance by its members with Rules 4-6.

This application is dated _____ and is signed on behalf of the applicant by all its members and directors.

Signatures
