

LC Paper No. CB(2)394/03-04(01)

SOLICITOR CORPORATIONS RULES
SOLICITOR CORPORATIONS (FEES) RULES
AMENDMENT TO THE SOLICITORS
(PROFESSIONAL INDEMNITY) RULES

1. The Legal Practitioners Ordinance (Cap 159) (“the ordinance”) was amended by the Legal Services Legislation (Miscellaneous Amendments) Ordinance in 1997 to enable solicitors to incorporate their practices as solicitor corporations. The amendments which are contained in Part II AA of the ordinance are to take effect upon notice being given in the Government Gazette by the Secretary for Justice.
2. Section 7 D (1) of the amended ordinance provides that:
“a solicitor corporation is authorized to do anything that only a solicitor can lawfully do and is required to do anything that a solicitor is required to do by law.”
3. Under amendments to section 2 of the ordinance a solicitor corporation becomes a “legal practice entity” which definition includes solicitors, foreign lawyers and law firms.
4. The amendments to the ordinance require the Council of the Law Society (“the Council”) to make rules in respect of solicitor corporations.
5. The Council intends to make rules (“the Rules”) in accordance with the draft at Annex A hereto in respect of solicitor corporations, in accordance with the draft at Annex B in respect of the fees payable to the Law Society for applications for registration as a solicitor corporation and in accordance with the amendments proposed in Annex C in relation to the professional indemnity cover of such corporations.

6. The Solicitor Corporation Rules

Rule 1

This contains definitions to be used in the context of the Rules.

Rule 2

The Rule provides for applications to be made for approval of the registration by the Law Society of a solicitor corporation. It requires the Council of the Law Society ("the Council") to be satisfied that the company or proposed company satisfies the qualifications for approval as a solicitor corporation as set out in Rule 3 and is not contrary to the public interest. Approval only takes effect once the solicitor corporation is formed and registered under the Companies Ordinance.

There is provision for the approval to be withdrawn in certain specified circumstances.

A fee is payable in accordance with the proposed Solicitor Corporations (Fees) Rules.

Rule 3

The rule sets out the grounds upon which a solicitor corporation may be approved. Amongst other requirements all members must be directors or employees of the company as must all directors. All members and directors must be individuals holding a current Practising Certificate and must have been in practice for the preceding 12 months.

Subject to certain exceptions referred to below every member must beneficially own his or her own shareholding in the company.

In order to assist sole practitioners who may wish to incorporate their practices provision is made in Rule 3 (2) to enable the requisite second member and director to be an individual other than a practising solicitor. This relaxation is qualified. It is only permitted in specified

circumstances as set out in Rule 3 (2) which include the requirement that the company is at all times managed and controlled by the sole practitioner, that only one share in the company may be vested in the second member who shall execute a declaration of trust in favour of the sole practitioner and that the written approval of the Council to the appointment is obtained.

Provision is made for the replacement of the second member in specified circumstances.

Rule 4

This rule deals with the way in which the solicitor corporation conducts its business and restricts it to the practice of law.

Rule 5

At all times the shares in a solicitor corporation must be held by solicitors who beneficially own them. They may not be held on behalf of other persons. Nor shall they be charged or be subject to any third party interests. The rule contains provision for the transfer of shares on death, striking off or bankruptcy and the non-exercise of voting rights in respect of such shares.

Rule 6

The rule sets out the requirements for the name of a solicitor corporation. This essentially follows the existing rules in respect of partnerships but permits the use of the pre-existing firm name as that of the solicitor corporation under certain prescribed conditions. The use of a name similar to that of an existing solicitor corporation or one which might mislead the public because of its similarity to that of an existing solicitor corporation is prohibited. The Council has power within 12 months of approval to require a solicitor corporation in such circumstances to change its name.

Rule 7

The certificate of approval given by the Council to a solicitor corporation is valid until revoked. It is not renewable annually.

Rule 8

The Council is required to state the grounds on which it has refused an application made under the Rules within 28 days and an appeal lies to the Chief Judge of the High Court in open court.

7. **Consequential amendments are required to the Solicitors (Professional Indemnity) Rules. ("the indemnity rules")**

The effect of the proposed changes will be to ensure that the solicitors and their staff working within a solicitor corporation will remain in the same position with regard to professional indemnity cover as though they were practising through the existing forms of sole proprietorship or partnership.

Since a solicitor corporation will be a body corporate it will enjoy limited liability thus limiting the members' exposure to the amount of their stake in the company. Business will normally be conducted with the solicitor corporation as the principal and not with the members who will be agents of the corporation and, unlike partners, not agents of each other. The corporation will be liable for the acts of its members in the ordinary course of business and any claims will be against the assets of the solicitor corporation. Generally speaking the personal assets of the solicitors within the corporation will not be subject to claims against the corporation.

However under the general law of agency a director as agent of the company may in certain circumstances be jointly and severally liable with the company for tortious acts committed by the company. For example if a director undertakes work negligently for the company he may be liable even though the tort is itself committed by the company. Similarly if a director personally directs or procures the commission of a tort he will be liable. A director is liable in tort for negligently causing

loss to any person with whom he has entered into a contract if the circumstances impose a personal duty on the director towards that person to act with proper skill or care e.g. in the relationship of solicitor and client. In the context of a solicitor corporation a solicitor director will have direct contact with the corporation's clients. Legal services to clients can only be provided by the exercise of personal skill and care of the solicitor director or the corporation's employees. Accordingly a solicitor director who acts negligently towards his clients may be personally liable in tort to the client notwithstanding that the client has entered into a contract with the solicitor corporation.

The amendment to Rule 6 of the Third Schedule to the indemnity rules is to make it clear that there is a limit to the liability of the indemnity fund if a claim is made against both the solicitor corporation and a negligent staff member/director/employee. That limit is the same limit applied to claims made against solicitors not practising within a solicitor corporation, namely HK\$10 million.

20 November 2003

doc. 72742

Annex A

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 7I 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 71 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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-----	-----	-----
-----	-----	-----
-----	-----	-----
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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

Annex B

Solicitor Corporations (Fees) Rules

1. Citation

These rules may be cited as the Solicitor Corporations (Fees) Rules.

2. Fees

The fees set out in Schedule 1 are prescribed for payment under the Solicitor Corporations Rules made under the Ordinance.

3. Payment of fees

The fees set forth in Schedule 1 shall be paid to the persons named in the fourth column of such Schedule opposite such fees.

SCHEDULE 1

FEES PAYABLE UNDER THE SOLICITOR CORPORATIONS RULES

Item	Section	Description	Payee	Fee \$
1.	2(3)	Application for approval of a solicitor corporation	The Law Society of Hong Kong	HK\$5,000

doc. 63409
26/11/2002

Annex C

SOLICITORS (PROFESSIONAL INDEMNITY) RULES**Proposed amendments****Rule 2**

Amend the definition of "Indemnified" so as to read, "indemnified" means the firm or solicitor corporation named in the receipt referred to in Rule 9, or any principal in the firm, any person employed in or in connection with the Practice (including any director or member of a solicitor corporation, any assistant solicitor, any assistant solicitor who is a consultant with the firm ... in connection with the Practice"

Amend the definition of "Practice" to include:

(j) a solicitor corporation,

Amend the definition of "principal" to read, " "Principal" means a partner or sole practitioner of a firm or a director of a solicitor corporation and shall also include any solicitor holding out as such a partner, sole practitioner or a director of a solicitor corporation.

Rule 6 Schedule 3

Amend Rule 6 (1) so as to read,

"The aggregate liability of the Fund for all claims arising from the same act or omission or in any claim where a solicitor corporation is named or could be named in proceedings, arising from the same act or omission or from causally connected acts or omissions and/or from a series of acts or omissions which relate to one originating cause (whether or not made or intimated or arising out of circumstances notified during the same indemnity period) against any indemnified or former solicitor or any combination of persons entitled to indemnity under these rules shall in no event exceed in total the indemnity limit determined in accordance with paragraph 2 or 3 whichever is smaller.

For the avoidance of doubt, the Fund shall not be liable for more than one claim arising from the same act or omission or from causally

**connected acts or omission and/or from a series of acts or omissions
which relate to one originating cause.**

Doc. 72552