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LAW SOCIETY
 OF HONG KONG
 香港律師會

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20 May 2014

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Ms. Debbie Yau
 Clerk to Panel
 Panel on Administration
 of Justice and Legal Services
 Legislative Council
 Legislative Council Complex
 1 Legislative Council Road
 Central, Hong Kong

By E-mail

Dear Ms. Yau,

**Meeting of the Panel on Administration of Justice and Legal Services
 ("Panel") on 27 May 2014**

I refer to your letter of 23 April 2014 inviting representatives of the Working Party on Solicitor Corporation Rules of the Law Society ("Society") to attend the captioned meeting.

I should be grateful if you could put this letter before the Panel for its consideration at the meeting.

The Solicitor Corporation Rules ("SC Rules") were last considered by the Panel at its meeting on 28 March 2011. The following developments have since taken place:

1. Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 ("1997 Ordinance")

The Legal Practitioners Ordinance Cap.159 ("LPO") was amended by the 1997 Ordinance to enable law firms to incorporate. The amendments introduced by the 1997 Ordinance have been enacted but they have not come into operation pending the finalization of the drafting of the SC Rules and the consequential amendments to the various pieces of subsidiary legislation to the LPO.

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Incorporated in 1907 as a company limited by guarantee



The amendments introduced by the 1997 Ordinance to the LPO were further amended by the Statute Law (Miscellaneous Provisions) Ordinance 2012 and the Statute Law (Miscellaneous Provisions) Ordinance 2014.

A copy of the LPO with updated amendments is attached in **Annex 1**.

2. Draft SC Rules

The 11th draft of the SC Rules is attached in **Annex 2**.

The 8th draft of the SC Rules was put before the Panel for its consideration in the meeting on 28 March 2011. The differences between the 8th and the 11th drafts are highlighted in Annex 2.

The Chief Justice has given his approval in principle to the draft SC Rules.

The 11th draft was prepared prior to the commencement of the Companies Ordinance Cap.622 (“CO”) on 3 March 2014. The draft SC Rules will be reviewed and updated in the light of the CO.

3. Consequential amendments to the subsidiary legislation to the LPO

Consequential amendments were made to 16 pieces of subsidiary legislation to the LPO.

The Society has finalized the consequential amendments to the following pieces of subsidiary legislation with the Department of Justice (“DOJ”):

- (i) Barristers (Qualification) Rules
- (ii) Foreign Lawyers Registration Rules
- (iii) Legal Practitioners (Risk Management Education) Rules
- (iv) Solicitors Disciplinary Tribunal Proceedings Rules
- (v) Summary Disposal of Complaints (Solicitors) Rules

The Society is liaising with DOJ on the consequential amendments to the following pieces of subsidiary legislation:

- (i) Accountant’s Report Rules
- (ii) Admission and Registration Rules

- (iii) Foreign Lawyers Practice Rules
- (iv) Notaries Public (Practice) Rules
- (v) Practising Certificate (Special Conditions) Rules
- (vi) Practising Certificate (Solicitors) Rules
- (vii) Solicitors' Accounts Rules
- (viii) Solicitors (Professional Indemnity) Amendment No. 2 Rules 2011
- (ix) Solicitors' Practice Rules
- (x) Solicitors (Group Practice) Rules
- (xi) Trainee Solicitors Rules

The Chief Justice has given his approval in principle to the consequential amendments to the 16 pieces of subsidiary legislation.

The Society has written to the Secretary for Justice to invite DOJ for a meeting to discuss how to expedite the legislative amendments process on the outstanding consequential amendments.

4. Policy Issues

(i) Notification to the clients of the identity of supervising partners

In the letter of 15 October 2012 from the Judiciary to the Society, the Judiciary suggested to the Society to consult the Panel on the issue of whether to require solicitor corporations to notify their clients of the identity of the supervising partners.

The Society made submissions to the Panel on this issue in its letter of 2 September 2013 which is produced again in **Annex 3**.

(ii) Top-up professional indemnity insurance

The Judiciary also suggested to consider the question of top-up professional indemnity cover for solicitor corporations.

The Society again made submissions on this issue in its letter of 2 September 2013 in **Annex 3**.

One of the enclosures to Annex 3 is the claims statistics of the Hong Kong Solicitors Indemnity Fund calculated to the 2011/12 indemnity year.

Updated claims statistics calculated to the 2012/13 indemnity year are attached in **Annex 4**.

In addition to the information in Annexes 3 and 4, the Society would like to draw the attention of the Panel to the recent proposals of the Solicitors Regulation Authority (“SRA”) of England & Wales on the mandatory professional indemnity cover which law firms and incorporated practices are required to purchase. Currently, law firms in England & Wales are required to take out a minimum professional indemnity cover of £2m per claim and incorporated practices are required to take out a minimum professional indemnity cover of £3m per claim. The SRA is proposing to reduce the minimum limit of indemnity per claim for all types of firms to £500,000. In addition, the SRA is proposing to restrict cover to indemnified such as individuals, small and medium-sized enterprises, charities and trustees with a turnover not exceeding £2m. Corporate clients of law firms and incorporated practices with turnover above £2m will be excluded. The reasons for the proposals are that many firms in England & Wales are sole practitioners with low turnover of £100,000 to £250,000 and the compulsory cover of £2m to £3m is far above what is needed. The proposals are aimed at providing the right level of protection without incurring additional expenses that drive up costs of the law firms and incorporated practices which would ultimately be passed onto the consumers of legal services. Details are in the consultation document in **Annex 5**.

(iii) Partnerships of solicitor corporations

The Panel raised in the last meeting a question on whether the Society would allow solicitor corporations to form partnerships.

The Society made submissions in its letter on 18 March 2014 on this issue and the letter is produced again in **Annex 6**.

Yours sincerely,



Vivien Lee
Director of Standards & Development

*Proposed amendments to the Legal Practitioners Ordinance
based on DoJ's letter of 7 March 2012, the minutes of the meeting of
the Working Party on Solicitor Corporation Rules on 14 May 2012,
the Statute Law (Miscellaneous Provisions) Ordinance 2012 and
the Statute Law (Miscellaneous Provisions) Ordinance 2014*

[Amendments already gazetted but have not yet come into operation]

Legal Practitioners Ordinance Annex 1

ARRANGEMENT OF SECTIONS

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**Proposed amendments to the Legal Practitioners Ordinance
based on DoJ's letter of 7 March 2012, the minutes of the meeting of
the Working Party on Solicitor Corporation Rules on 14 May 2012,
the Statute Law (Miscellaneous Provisions) Ordinance 2012 and
the Statute Law (Miscellaneous Provisions) Ordinance 2014**

Legal Practitioners Ordinance

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¹ See item 3 of the minutes on 14/05/12

² See item 3 of the minutes on 14/05/12

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the Statute Law (Miscellaneous Provisions) Ordinance 2012 and
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Legal Practitioners Ordinance

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**Proposed amendments to the Legal Practitioners Ordinance
based on DoJ's letter of 7 March 2012, the minutes of the meeting of
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the Statute Law (Miscellaneous Provisions) Ordinance 2012 and
the Statute Law (Miscellaneous Provisions) Ordinance 2014**

Legal Practitioners Ordinance

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the Statute Law (Miscellaneous Provisions) Ordinance 2014*

Legal Practitioners Ordinance

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**Proposed amendments to the Legal Practitioners Ordinance
based on DoJ's letter of 7 March 2012, the minutes of the meeting of
the Working Party on Solicitor Corporation Rules on 14 May 2012,
the Statute Law (Miscellaneous Provisions) Ordinance 2012 and
the Statute Law (Miscellaneous Provisions) Ordinance 2014**

Legal Practitioners Ordinance

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Legal Practitioners Ordinance

To make amended provision for the admission and registration of the legal practitioners and their employees, and of notaries public, ***approval and registration of barristers, and legal practice entities; and notaries public, for the employment of trainee solicitors and others by those entities, and, for the appointment and registration of notaries public; for regulating the practice of law, and for*** connected purposes connected therewith.

***[Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Bill 2012]
[Statute Law (Miscellaneous Provisions) Ordinance 2012]
[Statute Law (Miscellaneous Provisions) Ordinance 2014]***

PART I

SHORT TITLE AND INTERPRETATION

1. Short title

This Ordinance may be cited as the Legal Practitioners Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires -

"accountant's report" (會計師報告) means a report delivered in accordance with the provisions of section 8;

"Assessment Board" (評核委員會) means the Higher Rights Assessment Board established by section 39E;

"Association" (聯營組織) means an Association registered under Part IIIA;

"Bar Council" (執委會) means the Council of the Hong Kong Bar Association;

"barrister" (大律師) means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice;

"client" (當事人), except in relation to non-contentious business, includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, ***and any person who is or may be liable to pay a solicitor's costs or solicitor corporation, and any person who is or may be liable to pay the costs of a solicitor or solicitor corporation; [Ord. No. 94 of 1997]***

"common law jurisdiction" (普通法司法管轄區) means a jurisdiction in which the law is substantially based on the common law;

"contentious business" (爭訟事務) includes any business done by a solicitor in any court, whether as a solicitor or as an advocate;

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Legal Practitioners Ordinance

"costs" (訟費、事務費) includes fees, charges, disbursements, expenses and remuneration;

"Costs Committee" (事務費委員會) means the Costs Committee appointed under section 74;

"Council" (理事會) means, in relation to the Law Society, the council of the Society elected in accordance with the provisions of its articles of association;

"Council of the Society of Notaries" (公證人協會理事會) means the Council of Management of that society appointed in accordance with the provisions of its articles of association;

"Court" (法院) means the Court of First Instance;

"employee" (僱員) includes a former employee;

"foreign firm" (外地律師行) means a law firm or sole practitioner that is registered as a foreign firm under Part IIIA;

"foreign jurisdiction" (外地司法管轄區) means a jurisdiction other than Hong Kong;

"foreign law" (外地法律) means the law of a foreign jurisdiction;

"foreign lawyer" (外地律師) means a person registered as a foreign lawyer under Part IIIA;

"foreign lawyer corporation" (外國律師法團) means a corporation that is registered as a foreign lawyer corporation under Part IIIA; [Ord. No. 94 of 1997]

"higher rights of audience" (較高級法院出庭發言權) has the meaning given by section 39H(3);

"higher rights of audience certificate" (較高級法院出庭發言權證書) means a certificate issued under section 39P;

"Hong Kong firm" (香港律師行) means a law firm in which -

- (a) all of the partners are solicitors; or
- (b) the sole practitioner of which is a solicitor;

"legal practice entity" (法律執業實體) means any of the following —

- (a) a solicitor;**
- (b) a foreign lawyer;**
- (c) in relation to a solicitor who is a member of a Hong Kong firm, the firm;**
- (d) in relation to a foreign lawyer who is a member of a foreign firm, the firm;**
- (e) on and after the commencement of Part IIAA, a solicitor corporation;**

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Legal Practitioners Ordinance

(f) on and after the commencement of sections 39BA and 39BB, a foreign lawyer corporation;

"member" (成員), in relation to a legal practice entity that is a firm or corporation, means a partner, or the sole practitioner, of the firm or a shareholder of the corporation; [Ord. No. 94 of 1997]

"non-contentious business" (非爭訟事務) includes any business connected with sales, purchases, leases, mortgages and other matters of conveyancing;

"notary public" (公證人) means a person who is registered on the register of notaries public and who, at the material time, is not suspended from practice;

"officer" (高級人員) of a corporation means a director, manager, executive or secretary of the corporation; [Ord. No. 94 of 1997]

"Postgraduate Certificate in Laws" (法學專業證書) means a Postgraduate Certificate in Laws awarded by the University of Hong Kong, the City University of Hong Kong, the City Polytechnic of Hong Kong or The Chinese University of Hong Kong;

"practising certificate" (執業證書) means -

- (a) a certificate issued by the Society under section 6;
- (b) a certificate issued by the Bar Council under section 30; and
- (c) a certificate issued by the Society of Notaries under section 40E;

"qualified person" (合資格人士) means a person qualified for admission as a solicitor;

"register of notaries public" (公證人註冊紀錄冊) means the register kept by the Registrar in accordance with the provisions of section 40C;

"Registrar" (司法常務官) means the Registrar of the High Court and any senior deputy registrar, deputy registrar or assistant registrar of the High Court;

"roll of barristers" (大律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 29;

"roll of solicitors" (律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 5;

"roll of solicitor corporations" (律師法團登記冊) means the roll kept by the Secretary General of the Society in accordance with section 7I [Ord. No. 94 of 1997]

"Society" and "Law Society" (律師會) mean The Law Society of Hong Kong;

"Society of Notaries" (公證人協會) means the body known as Hong Kong Society of Notaries incorporated with limited liability under the Companies Ordinance (Cap. 32) as in force at the time and having among its objects the promotion of proper professional

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Legal Practitioners Ordinance

standards among notaries public, the regulation of the practice of notaries public and the performance or discharge of such duties or responsibilities as may be conferred on it under this Ordinance;

"solicitor" (律師) means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice;

"solicitor advocate" (訟辯律師) means a person who has higher rights of audience under Part IIIB;

"solicitor corporation" (律師法團) means a company that is approved by the Society under section 7C; [Ord. No. 94 of 1997]

"trainee solicitor contract" (實習律師合約) means a contract in writing, whether entered into before or after the commencement of this Ordinance, under which a person is employed as an articulated clerk or trainee solicitor for the purpose of being admitted as a solicitor;

"unqualified person" (不合資格人士) means a person who is not a solicitor ***or solicitor corporation. [Ord. No. 94 of 1997]***

- (1A) In this Ordinance, a reference to the Department of Justice shall, in relation to any period of time before 1 July 1997, be deemed to be a reference to the then Legal Department.
- (2) For the avoidance of doubt, it is hereby declared that any conduct of a trainee solicitor or employee of a solicitor ***or solicitor corporation*** which would reasonably be regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute shall be deemed misconduct. ***[Ord. No. 94 of 1997]***
- (3) Any rules made under section 73(1)(d) or (f) shall, subject to section 73(3) and unless the context otherwise requires, apply to a qualified person as they apply to a solicitor.

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Legal Practitioners Ordinance

PART II

SOLICITORS

3. Power of Court to admit solicitors

- (1) (Repealed)
- (1A) (Repealed)
- (1AA) (Repealed)
- (1AB) (Repealed)
- (1AC) (Repealed)
- (1AD) (Repealed)
- (1AE) (Repealed)
- (1AF) (Repealed)
- (1B) (Repealed)
- (2) Every solicitor shall be an officer of the Court and shall be subject to the jurisdiction thereof in accordance with the provisions of the High Court Ordinance (Cap. 4) and of this Ordinance.
- (3) Subject to the provisions of this Ordinance, the Court or any judge thereof may, in so far as it is not inconsistent with the Basic Law, exercise the same jurisdiction in respect of any person admitted to practise as a solicitor in the Court as was exercisable immediately before 1 July 1997 by the then High Court or any judge thereof, as the case may be, in respect of any person admitted to practise as a solicitor in the then High Court.

4. Qualifications for admission

- (1) The Court may, in such manner as may be prescribed by the Chief Justice, admit as a solicitor of the High Court a person who the Court considers is a fit and proper person to be a solicitor and who -
 - (a) has complied with requirements prescribed by the Council with respect to employment as a trainee solicitor, the passing of examinations and the completion of courses; or
 - (b) in the case of a person who seeks admission on the basis of qualifications acquired outside Hong Kong, qualifies for admission under requirements

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prescribed by the Council.

- (1A) The Court shall not admit a person under this section unless it has received from the Society a certificate to the effect that the Society is satisfied that the person -
- (a) has resided in Hong Kong for at least 3 months immediately before his admission;
 - (b) intends to reside in Hong Kong for at least 3 months immediately after his admission;
 - (c) has been ordinarily resident in Hong Kong for at least 7 years; or
 - (d) has been present in Hong Kong for at least 180 days of each of at least 7 years.
- (1B) The Court may, when admitting a person as a solicitor, sit in chambers.
- (2) A person shall not be disqualified from admission as a solicitor by reason only that -
- (a) a solicitor who employed him or acted as his principal for the whole term or such part of a term of a trainee solicitor contract as may be prescribed by the Council has neglected or omitted to take out a practising certificate; or
 - (b) the name of the solicitor who employed him as a trainee solicitor or acted as his principal for any period has after the termination of that period been removed from or struck off the roll of solicitors.
- (3) Where a person who was admitted as a solicitor on the basis of an intention referred to in subsection (1A)(b) fails to reside in Hong Kong for at least 3 months immediately after his admission, the Court may, on the application of the Society, order that the person's name be removed from or struck off the roll of solicitors.

5. Roll of solicitors

- (1) The Registrar shall keep a roll of all solicitors admitted by the Court under section 4 and shall have the custody of the roll of solicitors and of all documents relating thereto and shall allow any person to inspect the roll during office hours without payment.
- (2) The Registrar, upon production of a certificate of admission signed by a judge and upon payment to the Registrar and to the Society of such fees as may be prescribed by the Chief Justice, shall enter on the roll of solicitors the name of the person admitted.
- (3) The Chief Judge may, if he thinks fit, at any time order the Registrar to replace on the roll of solicitors the name of a solicitor whose name has been removed or struck off the roll of solicitors.

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6. Practising certificates-solicitors

- (1) The Society, on application in writing by a solicitor in the month of November in any year in a form approved by the Council and on payment of such fee as may be so prescribed, shall, subject to subsection (3), issue to the applicant a practising certificate as a solicitor for the period of one calendar year from 1 January next following the date of the application.
- (1A) A practising certificate issued to a solicitor admitted under section 3(1AD) before the repeal of that provision by the Legal Practitioners (Amendment) Ordinance 1994 (60 of 1994) is subject to the condition that the solicitor shall not practise on his own account or in partnership.
- (2) A practising certificate issued under subsection (1) shall be in such form as may be prescribed by the Council.
- (3) A practising certificate shall not be issued under subsection (1) unless the applicant has, where necessary, delivered to the Council an accountant's report under section 8, complied with any indemnity rules made by the Council under section 73A or is exempt from them and has paid to the Society the membership subscription in respect of the year for which the practising certificate is to be issued.
- (4) Notwithstanding subsection (1), the Society may, upon such conditions as it thinks fit, permit an application for a practising certificate to be made under this subsection at any time and upon such application may issue to the applicant a practising certificate for any period not exceeding one calendar year and ending on 31 December in the year in which it is issued.
- (5) Notwithstanding subsection (1), the Society may -
 - (a) refuse to issue a practising certificate on such grounds as may be prescribed by the Council;
 - (b) issue a practising certificate to an applicant subject to such conditions as may be prescribed by the Council;
 - (c) issue a practising certificate to an applicant subject to the condition that he shall comply with any continuing legal education rules made under section 73;
 - (d) refuse to issue a practising certificate if the applicant has not complied with any continuing legal education rules made under section 73; or
 - (e) amend an already issued certificate by adding such conditions as may be prescribed by the Council.
- (5A) Where the Society considers that a solicitor has not complied with conditions imposed under subsection (5) or (6) it may, after affording the solicitor the opportunity to make representations, suspend or cancel the solicitor's practising certificate with or without refunding the certificate fee.

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- (6) It shall be a condition of a practising certificate issued for the first time on or after 1 August 1976 to any solicitor who does not satisfy the Council that since being admitted as a solicitor he has been bona fide employed in the practice of a solicitor in Hong Kong for at least 2 years prior to his application for such practising certificate, that he shall not practise as a solicitor on his own account or in partnership until he satisfies the Council that since being admitted as a solicitor he has been bona fide employed in the practice of a solicitor in Hong Kong for at least 2 years.
- (6A) If the Council considers that an applicant has acquired substantial experience in the law either in Hong Kong or elsewhere, the Council may waive the 2 year employment requirement in subsection (6) or it may reduce the period of 2 years to a period it considers appropriate.
- (7) Where the name of a solicitor is removed from or struck off the roll of solicitors or where a solicitor becomes bankrupt, the practising certificate of that solicitor shall automatically determine and in any such case no part of the fee paid in respect thereof shall be repayable.
- (8) The publication in the Gazette by the Society of a list of the names and addresses of those solicitors who have obtained practising certificates for the period stated therein shall, until the contrary is proved, be evidence that each person named therein is a person qualified under section 7 to act as a solicitor and to whom a practising certificate for the period stated in such list has been issued under this section; and the absence from any such list of the name of any person shall, until the contrary is proved, be evidence that such person is an unqualified person.
- (9) Where the Society, in the exercise of the powers conferred on it under subsection (5) or (5A), refuses to issue a practising certificate, issues a certificate subject to conditions, amends a certificate by adding conditions or suspends or cancels a certificate, the solicitor may appeal to the Chief Judge against the decision of the Society within 1 month of being notified of it.
- (10) Where the Council refuses to disapply subsection (6) in the case of an applicant who claims to have acquired substantial experience in the law, either in Hong Kong or elsewhere, the applicant may appeal to the Chief Judge against the decision of the Council within 1 month of being informed of that decision.
- (11) On an appeal to the Chief Judge under subsection (9) or (10) he may -
- (a) affirm the decision of the Society or Council;
 - (b) direct the Society to issue a practising certificate to the appellant free from conditions or subject to such conditions as he thinks fit; or
 - (c) remit the matter to the Society or Council for reconsideration with such directions as he thinks fit.
- (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

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(b) of that subsection; the decision of the Chief Judge shall be final.

7. Qualifications for practising as solicitor

No person shall be qualified to act as a solicitor unless -

- (a) his name is for the time being on the roll of solicitors;
- (b) he is not suspended from practice;
- (c) he has in force a current practising certificate; and
- (d) he is complying with any indemnity rules made by the Council under section 73A that apply to him or is exempt from them.

7A. Solicitors may exercise functions of commissioner for oaths

- (1) For the purpose of administering and receiving an oath, affidavit or affirmation any solicitor who holds a current practising certificate shall possess and may exercise all the powers of a commissioner for oaths that are conferred by or under any law.
- (2) A document containing an oath, affidavit or affirmation administered and received under subsection (1) and purporting to be signed by a solicitor shall be admitted in evidence without proof of the signature of the solicitor, and without proof that he is a solicitor who holds a current practising certificate.

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PART IIAA

SOLICITOR CORPORATIONS [Ord. No. 94 of 1997]

7B. Definitions (Part IIAA)

In this Part -

"company" (公司) means a company formed and registered under the Companies Ordinance (Cap. 32);

"Council's rules" (理事會規則) means rules made under section 73;

"shares" (股份) has the same meaning as in the Companies Ordinance (Cap. 32).

7C. Society may approve companies as solicitor corporations

- (1) A person who wishes to have a company or a proposed company approved as a solicitor corporation must apply to the Society for approval of the company as a solicitor corporation.*
- (2) An application must be made in accordance with the Council's rules and be accompanied by such fee (if any) as may be prescribed by those rules.*
- (3) On receiving of an application in respect of a company or proposed company under this section, the Society may, in accordance with the Council's rules, approve or refuse to approve the company or proposed company as a solicitor corporation.*
- (4) 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).*

7D. Effect of company becoming solicitor corporation

- (1) 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.*
- (2) Subsection (1) does not apply to the doing of anything that can be done only by a solicitor as a natural person.*

7E. Requirements as to alteration of memorandum or articles and change of name

- (1) The approval in writing of the Society is required before -*

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- (a) the memorandum or articles of association of a solicitor corporation are amended; or***
 - (b) the name of a solicitor corporation is changed.***
 - (2) An application for approval under this section must be made in accordance with the Council's rules.***
 - (3) The Society may refuse approval under this section but only as provided by the Council's rules.***
- 7F. Offers to public of shares in solicitor corporation prohibited***
 - (1) Any person who offers or invites the public to subscribe for, or purchase, shares in, or debentures of, a solicitor corporation commits an offence and is liable on conviction to a fine at level 5.***
 - (2) In this section, "debentures" (債權證) has the same meaning as in the Companies Ordinance (Cap. 32).***
- 7G. Additional grounds for winding up solicitor corporation***
 - (1) A solicitor corporation may be wound up under the Companies Ordinance (Cap. 32) on grounds specified in rules made by the Chief Justice under section 72.***
 - (2) The grounds for winding up specified in rules referred to in subsection (1) are additional to those prescribed by the Companies Ordinance (Cap. 32).***
 - (3) An application to wind up a solicitor corporation on a ground specified in subsection (1) can be made only by the Society.***
- 7H. Right of appeal against decisions of Society under this Part***
 - (1) An applicant for approval by the Society of -***
 - (a) a company or proposed company as a solicitor corporation; or***
 - (b) an amendment to the memorandum or articles of association of a solicitor corporation; or***
 - (c) a change in the name of a solicitor corporation,******may appeal to the Court against a decision of the Society refusing approval.***
 - (2) An appeal must comply with rules made under section 72 for the purposes of this***

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section.

- (3) ***On the hearing of an appeal, the Court may –***
- (a) ***confirm the decision of the Society; or***
 - (b) ***direct the Society to grant the application for approval, either unconditionally or subject to conditions specified by the Court,***

and may make such order as to the payment of costs by the Society or by the applicant as it thinks fit.

7I. Roll of solicitor corporations

- (1) ***The Secretary General of the Society is required -***
- (a) ***to keep a roll of all solicitor corporations approved under section 7C and to have custody of the roll and all documents relating to it; and***
 - (b) ***to allow any person to inspect the roll during ordinary office hours without payment.***
- (2) ***The Secretary General of the Society is, on payment to the Society of such fee as may be prescribed by the Chief Justice, required to enter on the roll of solicitor corporations the name of the corporation concerned.***
- (3) ***The Chief Justice Judge [Ord. No. 23 of 2002] may, at any time, order the Secretary General of the Society to replace on the roll of solicitor corporations the name of a solicitor corporation whose name has been struck off or removed from that roll.***

7J. Legal professional privilege and solicitor corporations

Solicitor-client privilege exists between a solicitor corporation and a client of the corporation in the same way as it exists between a solicitor and a client of the solicitor.

7K. This Part to prevail over inconsistent provisions of memorandum and articles

This Part, and rules made under sections 72 and 73 for the purposes of this Part, prevail over inconsistent provisions of the memorandum and articles of association of a solicitor corporation.

~~7L. This Part not to affect operation of Companies Ordinance~~

~~Nothing in this Part affects the operation of the Companies Ordinance (Cap. 32) in relation to its application to a company that is a solicitor corporation.~~

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7L. Companies Ordinance applies to solicitor corporations

(1) Except as provided in subsection (2), the Companies Ordinance (Cap. 32) applies in relation to a company that is a solicitor corporation.

(2) For the purposes of section 114C(1) of the Companies Ordinance (Cap. 32), a member of a solicitor corporation is entitled to appoint as the member's proxy only a solicitor who is a member or employee of the corporation.

[Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

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PART IIAB

**PROVISIONS APPLICABLE TO LEGAL PRACTICE ENTITIES GENERALLY
[Ord. No. 94 of 1997]**

8. Accountant's reports

- (1) Every ~~solicitor and foreign lawyer~~ **legal practice entity** shall once in each period of 12 months ending with 31 October or such other date as may be prescribed by the Council, unless he ~~the entity~~ satisfies the Council that ~~owing to the circumstances of his~~ **because of the circumstances of the** case it is unnecessary so to do, deliver by post or otherwise to the Council a report signed by an accountant (hereinafter referred to as "an accountant's report") and containing such information as may be prescribed by rules made by the Council under section 73(1)(b): **[Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]**

Provided that an accountant's report shall be delivered to the Council not more than 6 months (or such other period as any rules made under section 73(1)(b) may prescribe) after the end of the accounting period specified in that report.

- (2) Subject as may be prescribed by the Council, the accounting period for the purposes of an accountant's report shall -
- (a) begin at the expiry of the last preceding accounting period for which an accountant's report has been delivered;
 - (b) cover not less than 12 months;
 - (c) terminate not more than 6 months, or such lesser period as may be prescribed by the Council, before the date of the delivery of the report to the Council; and
 - (d) where possible, consistently with paragraphs (a), (b) and (c) correspond to a period or consecutive periods for which the accounts of the ~~solicitor, or foreign lawyer, or his firm~~ **legal practice entity**, are ordinarily made up. **[Letter of 7 March 2012 by DoJ] [Statute Law (Miscellaneous Provisions) Ordinance 2012]**
- (3) If a ~~solicitor or foreign lawyer~~ **legal practice entity** fails to comply with the provisions of this section or any requirements relating to accounts which may be prescribed by the Council any person may make a complaint in respect of that failure to the Council. **[Ord. No. 94 of 1997]**

8A. ~~Council may examine documents if solicitor is unfit~~

- (1) ~~Where the Council considers that a solicitor or foreign lawyer may be unfit to practise~~

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~~the Council may, if it considers it necessary for the purpose of investigating the matter, require the solicitor, the foreign lawyer or his firm to produce or deliver to a person appointed by the Council, at a time and place fixed by the Council, all documents in the possession of the solicitor, the foreign lawyer or his firm that the Council specifies either particularly or generally.~~

- ~~(2) Without limiting subsection (1), the Council may take the following factors into account in deciding whether to act under subsection (1) —~~
- ~~(a) the solicitor's or foreign lawyer's mental and physical health;~~
 - ~~(b) the solicitor's or foreign lawyer's ability to supervise his practice;~~
 - ~~(c) the nature and frequency of complaints made against the solicitor or foreign lawyer;~~
 - ~~(d) the solicitor's or foreign lawyer's financial position;~~
 - ~~(e) conviction of the solicitor or foreign lawyer for an offence for which a sentence of imprisonment is possible; and~~
 - ~~(f) the number of successful claims made against the solicitor or foreign lawyer for negligence or breach of duty.~~
- ~~(3) After considering a report of the person appointed under subsection (1) and any written representations made by or on behalf of the solicitor or foreign lawyer, if the Council considers that the solicitor or foreign lawyer is unfit to practise, the Council shall submit the matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel and may suspend the solicitor from practice or suspend the foreign lawyer's registration pending a decision of the Solicitors Disciplinary Tribunal constituted to deal with the matter.~~

8A. Council may examine documents if person is unfit to practise

- (1) If the Council considers that a legal practice entity may be unfit to practise, it may, in writing, appoint a person as an inspector to inquire into and report on the matter.**
- (2) The Council may take the following factors into account in deciding whether or not to take action under subsection (1) in relation to a legal practice entity —**
- (a) the ability of a solicitor or foreign lawyer to supervise the relevant practice;**
 - (b) the nature and frequency of complaints against the entity;**
 - (c) the financial position of the entity;**
 - (d) the conviction of the entity, or a member of the entity, for an offence that is punishable by imprisonment;**

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- (e) *the number of successful claims against the entity for negligence or breach of duty;*
- (f) *the mental and physical health of any solicitor or foreign lawyer who comprises or is a member of the entity.*
- (3) *A legal practice entity must, on being required to do so by an inspector appointed under this section or by the Council, produce to the inspector all documents, or all documents of a specified kind, in the entity's possession.*
- (4) *The Council must refer the matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel if, after considering the report of the inspector and any representations made by or on behalf of the legal practice entity, it considers that that entity is unfit to practise.*
- (5) *On referring the matter to the Tribunal Convenor, the Council may suspend the legal practice entity from practise pending the decision of the Solicitors Disciplinary Tribunal constituted to deal with the matter. [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
- (6) *On an application —*
- (a) *made in writing by or on behalf of the legal practice entity; and*
- (b) *supported by relevant documents,*
- the Council may, if it is satisfied that the circumstances that gave rise to the suspension under subsection (5) no longer exist or otherwise considers appropriate, revoke the suspension at any time before the Solicitors Disciplinary Tribunal makes a decision.*
- (7) *The Council may, if it is satisfied that the circumstances that gave rise to the revocation under subsection (6) no longer exist or otherwise considers appropriate, restore the suspension at any time after the revocation but before the Solicitors Disciplinary Tribunal makes a decision.*
- (8) *The Council may take into account any of the factors set out in subsection (2)(a) to (f) in deciding whether to act under subsection (6) or (7).*

[Statute Law (Miscellaneous Provisions) Ordinance 2014]

8AA. Appointment and powers of inspector

- (1) The Council may appoint a person as an inspector to assist the Council -
- (a) in verifying compliance by a solicitor, a foreign lawyer, a trainee solicitor or an

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~~employee of a solicitor or foreign lawyer~~ **a legal practice entity, a member or employee of such an entity, or a trainee solicitor** with the provisions of this Ordinance or any practice direction issued by the Society; **[Ord. No. 94 of 1997]**

- (b) ~~in determining for the purpose of section 9A whether the conduct of any solicitor, foreign lawyer, trainee solicitor or employee of a solicitor or foreign lawyer~~ **a legal practice entity, a member or employee of such an entity, or a trainee solicitor** should be inquired into or investigated; or **[Ord. No. 94 of 1997]**
- (c) in relation to an inquiry or investigation under section 9B.
- (2) For the purposes of subsection (1), an inspector may -
- (a) in relation to any person who acts or purports to act as an employee of a solicitor **or solicitor corporation** in the premises of any court or place of lawful detention - **[Ord. No. 94 of 1997]**
- (i) question there and then the person as to his name, identity card number, the identity of any client for whom he acts or purports to act on that occasion and the name of the firm **or corporation** of which he acts or purports to act as the employee; and **[Ord. No. 94 of 1997]**
- (ii) require the person to produce for inspection there and then all documents in his possession that the inspector reasonably suspects to be relevant to any matter referred to in subsection (1)(a), (b) or (c) and copy or seize any of the documents; and
- (b) ~~(i) subject to subsection (3), require a solicitor, a foreign lawyer, or an employee of a solicitor or foreign lawyer to produce or deliver to him for inspection, at a time and place specified by him, all documents in the possession of the solicitor, foreign lawyer or employee of a solicitor or foreign lawyer that the inspector reasonably suspects to be relevant to any matter referred to in subsection (1)(a), (b) or (c) and specifies particularly or generally; and~~
- (i) **subject to subsection (3), require a legal practice entity or a member or employee of such an entity to produce to the inspector for inspection at a specified time and place such documents in the possession of the entity, member or employee as the inspector specifies, either particularly or generally (being documents that the inspector reasonably suspects to be relevant to a matter referred to in subsection (1)(a), (b) or (c); and [Ord. No. 94 of 1997]**
- (ii) copy or seize any of the documents produced or delivered under subparagraph (i).
- (3) An inspector shall not exercise his power under subsection (2)(b)(i) except under a

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direction of the Council to do so.

- (4) No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the exercise of any power under this section.
- (5) In this section, "identity card" (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177).

8AAA. Additional powers of an inspector

- (1) In this section "inspector" (調查員) means an inspector appointed under section 8AA.
- (2) The Council may direct an inspector to assist it in gathering evidence in respect of a matter the Council is considering for the purpose of deciding whether or not it should be submitted to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.
- (3) For the purposes of this section, an inspector may question -
 - (a) persons who are, or were at the material time, members or employees of any law firm **legal practice entity**; or *[Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance*
 - (b) where authorized by the Council, any other persons whom the inspector considers may be able to assist the Council.

8B. Document production and privilege

- (1) For the purpose of enforcing the production of documents required by the Council under section 8A, section 11 applies and references in section 11 to the Solicitors Disciplinary Tribunal and to the Chairman of the Solicitors Disciplinary Tribunal shall be deemed to be references respectively to the Council and to the President of the Society.
- (2) Documents required by the Council under section 8A or by an inspector under section 8AA shall be produced or delivered notwithstanding any claim of solicitor-client privilege but documents that are subject to a solicitor-client privilege may only be used for the purposes of an inquiry or investigation under this Ordinance.

9. Solicitors Disciplinary Tribunal Panel

- (1) The Chief Justice shall appoint a Solicitors Disciplinary Tribunal Panel consisting of not more than 120 practising solicitors of at least 10 years' standing, not more than 10 foreign lawyers and not more than 60 lay persons who are not, in the opinion of the Chief Justice, connected in any way with the practice of law.
- (2) A member of the Council is not eligible to be appointed to or remain on the Panel.

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- (3) A person appointed to the Panel shall be appointed for a term specified by the Chief Justice not to exceed 5 years but may be reappointed for a further term or terms.
- (4) The Chief Justice shall appoint a solicitor as the Tribunal Convenor for a 3 year term and he may appoint one or more solicitors on the Panel and one or more foreign lawyers on the Panel as Deputy Tribunal Convenors for 3 year terms.
- (5) If the Tribunal Convenor is precluded by illness, absence from Hong Kong or any other cause from exercising his functions under this Ordinance, a Deputy Tribunal Convenor may act in his place.
- (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.

**9A. Complaint about ~~solicitor's~~ conduct of solicitor, foreign lawyer legal practice entity, etc.
[Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions)
Ordinance 2012**

- (1) Where the Council considers that the conduct of a person who is, or was at the relevant time, ~~a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer~~ **a legal practice entity, a member or employee of such an entity, or a trainee solicitor** should be inquired into or investigated as a result of a complaint being made to it or otherwise, the Council shall submit the matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel. [*Ord. No. 94 of 1997*]
- (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,

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;

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- (c) the gravity of the alleged breach;
 - (d) any other factor it considers relevant.
- (2) Where a complaint is made to the Council and the Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so.

9AA. Misconduct of member or employee of solicitor corporation or foreign lawyer corporation

Conduct of a person who is a member or officer [Ord. No. 14 of 2003] of, or is employed by, a solicitor corporation or a foreign lawyer corporation may be the subject of a complaint, and may be investigated, inquired into and dealt with under this Part in the same way as the conduct of a solicitor or employee of a solicitor or foreign lawyer may be investigated, inquired into and dealt with, but only in so far as the conduct relates to the practice carried on by the corporation. [Ord. No. 94 of 1997]

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.
- (5) Payment of an amount ordered to be paid by the Tribunal Convenor may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the Tribunal Convenor and the rules of the Court, so far as applicable, apply to the

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order.

- (6) An order filed with the Secretary General of the Society shall be available for inspection by any person affected during such hours as the Council may decide.

9B. Solicitors Disciplinary Tribunal

- (1) On receipt of a submission under section 8A(3) or 9A in respect of a person who is, or was at the relevant time, ~~a solicitor, a trainee solicitor or an employee of a solicitor~~ ***a solicitor or employee of a solicitor, a solicitor corporation or a member or employee of such a corporation, or a trainee solicitor, [Ord. No. 94 of 1997]*** the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel shall, unless it is a matter that is to be disposed of by the Tribunal Convenor under section 9AB, appoint from the Panel 2 solicitors and one lay person to constitute a Solicitors Disciplinary Tribunal to inquire into and investigate the matter.
- (1A) On receipt of a submission under section 8A(3) or 9A in respect of a person who is, or was at the relevant time, ~~a foreign lawyer or an employee of a foreign lawyer~~ ***a foreign lawyer or employee of such a lawyer, or a foreign firm or foreign lawyer corporation or a member or employee of such a firm or corporation, [Ord. No. 94 of 1997]*** the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel shall, unless it is a matter that is to be disposed of by the Tribunal Convenor under section 9AB, appoint from the Panel 2 solicitors, one foreign lawyer and one lay person to constitute a Solicitors Disciplinary Tribunal to inquire into and investigate the matter.
- (2) The Tribunal members shall elect as chairman one of its members who is a solicitor.
- (3) The Council may be represented at proceedings before the Tribunal.
- (4) The Tribunal shall sit in camera in the places and at the times it directs.
- (5) A member of the Tribunal who becomes a member of the Council may continue as a member of the Tribunal notwithstanding section 9(2).

10. Powers of a Solicitors Disciplinary Tribunal

- (1) A Solicitors Disciplinary Tribunal shall have power to inquire into and investigate the conduct of any person in respect of which it was appointed.
- ~~(2) Subject to the provisions of this Ordinance, on completion of its inquiry and investigation, a Solicitors Disciplinary Tribunal shall have power to make such order as it thinks fit and any such order may, in particular, include provision for all or any of the following matters-~~
- ~~(a) striking off the roll of solicitors the name of the solicitor to whom the inquiry or investigation relates;~~

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- ~~(b) — suspending that solicitor from practice for such period as the Solicitors Disciplinary Tribunal shall think fit;~~
- ~~(ba) — permitting the solicitor to continue practice, but subject to conditions which may be imposed for up to 3 years;~~
- ~~(bb) — payment by that solicitor or foreign lawyer to the complainant of an amount not exceeding the amount paid to the solicitor or foreign lawyer by way of fees and disbursements in relation to the complainant's matters in dispute;~~
- ~~(bc) — payment by that solicitor to a fund established under section 73A of an amount not greater than an amount paid out of the fund in respect of that solicitor;~~
- ~~(c) — payment by that solicitor of a penalty not exceeding \$500,000 which shall be paid into the general revenue;~~
- ~~(d) — censure of that solicitor or, if the inquiry or investigation relates to a solicitor's employee or trainee solicitor, of such employee or trainee solicitor;~~
- ~~(e) — payment by any party of the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or payment of an amount that the Tribunal considers is a reasonable contribution towards those costs;~~
- ~~(f) — cancellation or suspension of the trainee solicitor contract of the trainee solicitor to whom the inquiry or investigation relates;~~
- ~~(g) — prohibition of employment by any solicitor or foreign lawyer of any solicitor's employee or trainee solicitor or foreign lawyer's employee, to whom the inquiry or investigation relates, for such period as the Solicitors Disciplinary Tribunal may decide;~~
- ~~(h) — cancelling the registration of the foreign lawyer to whom the inquiry or investigation relates;~~
- ~~(i) — suspending the registration of the foreign lawyer for a period that the Solicitors Disciplinary Tribunal considers appropriate;~~
- ~~(j) — imposing conditions for the continued registration of the foreign lawyer for up to 3 years;~~
- ~~(k) — payment by the foreign lawyer to the complainant of an amount not exceeding the amount paid to the foreign lawyer by way of fees and disbursements in relation to the complainant's matters in dispute;~~
- ~~(l) — payment by the foreign lawyer of a penalty not exceeding \$500,000 which shall be paid into the general revenue; and~~

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- ~~(m) — censure of the foreign lawyer or, if the complaint or investigation relates to a foreign lawyer's employee, censure of that employee.~~
- (2) On completing an inquiry and investigation into the conduct of a solicitor or solicitor corporation and on being satisfied that the conduct of the solicitor or corporation so warrants, a Solicitors Disciplinary Tribunal can make any of the following orders —**
- (a) an order striking the name of the solicitor from the roll of solicitors, or cancelling the approval of the corporation under section 7C;**
 - (b) an order suspending the solicitor from practice, or suspending the approval of the corporation under section 7C, for such period as the Tribunal thinks fit;**
 - (c) an order imposing conditions on the practice of the solicitor or corporation that are to have effect for a specified period of not more than 3 years;**
 - (d) an order directing the solicitor or corporation to pay to the complainant an amount that is not more than the amount paid by the complainant to the solicitor or corporation as fees and disbursements in respect of the matter complained of;**
 - (e) an order directing the solicitor or corporation to pay to a fund established under section 73A of an amount not more than the amount (if any) paid out of the fund in relation to the conduct in question;**
 - (f) an order directing the solicitor or corporation to pay into the general revenue a penalty of not more than \$500,000;**
 - (g) an order censuring the solicitor or corporation;**
 - (h) an order prohibiting the solicitor or corporation from employing a trainee solicitor or other employee to whom the inquiry relates for such period as is specified in the order. [Ord. No. 94 of 1997]**
- (2A) On completing an inquiry and investigation into the conduct of a trainee solicitor and on being satisfied that the conduct of the trainee solicitor so warrants, a Solicitors Disciplinary Tribunal can make either of the following orders —**
- (a) an order cancelling the trainee solicitor contract of the trainee solicitor; or**
 - (b) an order censuring the trainee solicitor. [Ord. No. 94 of 1997]**
- (2B) On completing an inquiry and investigation into the conduct of a foreign lawyer, foreign firm or foreign lawyer corporation and on being satisfied that the conduct of the lawyer, firm or corporation so warrants, a Solicitors Disciplinary Tribunal can make any of the following orders —**

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- (a) an order cancelling the registration of the lawyer, firm or corporation;***
 - (b) an order suspending the registration of the lawyer, firm or corporation for such period as the Tribunal considers appropriate;***
 - (c) an order imposing conditions on the practice of the lawyer, firm or corporation that are to have effect for a specified period of not more than 3 years;***
 - (d) an order directing the lawyer, firm or corporation to pay to the complainant an amount that is not more than the amount paid by the complainant to the lawyer, firm or corporation as fees and disbursements in respect of the matter complained of;***
 - (e) an order directing the lawyer, firm or corporation to pay into the general revenue a penalty of not more than \$500,000;***
 - (f) an order censuring the lawyer, firm or corporation;***
 - (g) an order prohibiting the lawyer, firm or corporation from employing any employee to whom the investigation relates for such period as is specified in the order. [Ord. No. 94 of 1997]***
- (2C) On completing an inquiry and investigation into the conduct of an employee of a legal practice entity and on being satisfied that the conduct of the employee so warrants, a Solicitors Disciplinary Tribunal can make an order censuring the employee. [Ord. No. 94 of 1997]***
- (2D) On the application of the Council, a Solicitors Disciplinary Tribunal can also make an order cancelling the approval of a solicitor corporation under section 7C or cancelling the registration of a foreign lawyer corporation under section 39BA if the Tribunal — [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]***
- (a) makes an order under this section in respect of a solicitor or foreign lawyer who is an officer of the corporation; or***
 - (b) makes an order under this section in respect of an employee of the corporation (including a trainee solicitor of a solicitor corporation) and the conduct of the employee that gave rise to the order was instigated or connived at by a solicitor or foreign lawyer who is an officer of the corporation, or was carried on with the knowledge of the solicitor or foreign lawyer after the solicitor or foreign lawyer became aware of it. [Ord. No. 94 of 1997]***
- (2E) In subsection (2D), a reference to an officer of a solicitor corporation or a foreign lawyer corporation includes a reference to a person who was a director of the corporation at the time of the conduct that gave rise to the order referred to in paragraph (a) or (b) of that subsection. [Ord. No. 94 of 1997]***

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- (2F) ***A Solicitors Disciplinary Tribunal can order any party to proceedings before it to pay the whole or a part of—***
- (a) ***the costs of or incidental to the proceedings; and***
 - (b) ***the costs of any previous inquiry or investigation. [Ord. No. 94 of 1997]***
- (2G) ***Any such costs are to be taxed by a Master of the Supreme Court on a full indemnity basis. [Ord. No. 94 of 1997]***
- (3) Every order made under subsection (2) shall be filed with the secretary of the Society and shall ***this section must be filed with the Secretary General of the Society and*** be available for inspection by any person affected during such hours as the Council may prescribe. ***[Ord. No. 94 of 1997]***
- ~~(4) An order that may be made under subsection (2) may also be made in respect of a person who was, at the relevant time, a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer.~~
- (4) ***An order under subsection (2) or (2B) may be made in respect of a person who is no longer a legal practice entity, a member or employee of such an entity, or a trainee solicitor, if the person was, at the relevant time, a legal practice entity, member or employee of such an entity, or a trainee solicitor. [Ord. No. 94 of 1997]***

11. Ancillary powers of a Solicitors Disciplinary Tribunal

- (1) For the purpose of conducting any such inquiry or investigation, a Solicitors Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters –
- (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
 - (b) compelling the production of documents;
 - (c) punishing persons guilty of contempt;
 - (d) ordering an inspection of any property;
 - (e) conducting the examination of witnesses; and
 - (f) adjourning any meeting from time to time and from one place to another,

and a summons under the hand of the Chairman of a Solicitors Disciplinary Tribunal may be substituted for and shall be equivalent to any form of process capable of being issued in any action or suit for compelling the attendance of witnesses or the production of documents and any warrant of committal to prison issued for the purpose of enforcing

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any such powers as aforesaid shall be under the hand of such Chairman and shall not authorize the imprisonment of any offender for a period exceeding 1 month.

- (2) The Commissioner of Police and all police officers, officers of the court, gaolers and bailiffs of the court are required to give their utmost assistance to every Solicitors Disciplinary Tribunal and to every chairman thereof, in the enforcement of documents, warrants and orders issued in accordance with subsection (1) or otherwise.
- (3) Every member of a Solicitors Disciplinary Tribunal shall have the like protection and privileges, in relation to any action or suit brought against him for any act done or omitted to be done in the execution of his duties as such member, as is given by any law to a magistrate acting in the execution of his office.
- (4) All proceedings of a Solicitors Disciplinary Tribunal and any order made in accordance with the provisions of section 10 shall be privileged.

12. Findings of a Solicitors Disciplinary Tribunal

- (1) An order made by a Solicitors Disciplinary Tribunal shall include a statement of its findings in relation to the facts of the case and shall be signed by the chairman or by a member authorized by the Tribunal.
- (2) A signed copy of an order of a Tribunal in relation to a solicitor shall be filed with the Registrar who shall enter a note of the order on the roll of solicitors in connection with the name of the solicitor and, where the order so directs, the Registrar shall strike off the name and shall publish an order for suspension or striking off in the Gazette within 14 days after receiving a copy of the order.
- ~~(2A) A signed copy of an order of a Tribunal in relation to a foreign lawyer shall be filed with the Secretary General of the Society and, where the order so directs, the Secretary General shall publish an order for suspension or cancellation of the registration in the Gazette within 14 days after receiving a copy of the order.~~
- (2A) A signed copy of an order of a Tribunal relating to a solicitor corporation must be filed with the Secretary General of the Society who must, on receipt, record particulars of the order in the roll of solicitor corporations. If the order directs the cancellation or suspension of the approval of the solicitor corporation and the order so provides, the Secretary General must publish the order in the Gazette within 14 days after receiving the copy of it. [Ord. No. 94 of 1997]**
- (2B) A signed copy of an order of a Tribunal relating to a foreign lawyer, foreign firm or foreign lawyer corporation must be filed with the Secretary General of the Society who must, on receipt, record particulars of the order in the appropriate register. If the order directs the cancellation or suspension of the registration of the foreign lawyer, foreign firm or foreign lawyer corporation and the order so provides, the Secretary General must publish the order in the Gazette within 14 days after receiving the copy of it. [Ord. No. 94 of 1997]**

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- (3) The Tribunal that heard the matter or a Tribunal constituted for the purpose by the Tribunal Convenor may, on the application of a party against whom an order for payment is made, order that payment may be paid by instalments or be deferred for a period the Tribunal considers appropriate.
- (4) An application for an order for payment by instalments, or for the deferring of payment, may be made at the hearing or, within 14 days after the date of the order for payment, by notice in writing to the Tribunal Convenor and to all parties who were represented at the Tribunal hearing.
- (5) On receipt of a notice under subsection (4), the Tribunal Convenor shall, within 14 days, notify the applicant and the other parties of the date on which the application will be heard by a Tribunal.
- (6) There is no right of appeal from the decision of the Tribunal on an application under subsection (4).
- (7) Payment of an amount ordered to be paid by the Tribunal may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the chairman or other authorized member of the Tribunal and the rules of the Court, so far as applicable, apply to the order.
- (8) No order under subsection (7) shall be enforced until after the 14 days referred to in subsection (4) has elapsed or until after the Tribunal has made its decision under subsection (3).
- (9) A signed copy of every order made by a Tribunal under section 10 shall be filed with the Secretary of the Society of Notaries within 14 days after it is made by the Tribunal.

13. Appeal and saving

- (1) Subject to section 12(6), an appeal against any order made by a Solicitors Disciplinary Tribunal shall lie to the Court of Appeal and the provisions of Order 59 of the Rules of the High Court (Cap. 4 sub. leg. A) shall apply to every such appeal save that the time for serving notice of motion of appeal shall be 21 days from the date of the decision and not 28 days as provided in the said Order.
- (2) Subject to subsection (2A), in any appeal under subsection (1) the Society shall be the respondent.
- (2A) The Council may, with leave of the Court of Appeal, appeal an order of a Solicitors Disciplinary Tribunal under subsection (1), in which case the Society shall be the appellant and the person whose conduct was the subject of the inquiry by the Solicitors Disciplinary Tribunal shall be the respondent.
- (3) Nothing herein contained shall affect the jurisdiction of the Court under sections 3(2) and 45.

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- (4) The hearing of every appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal may otherwise direct.

13A. Publication of findings of Solicitors Disciplinary Tribunal

- (1) Unless, on application by the solicitor **legal practice entity**, the Court of Final Appeal, the Court of Appeal or the Solicitors Disciplinary Tribunal otherwise orders, the Society may, after the expiry of the time for filing an appeal under section 13 or, if such an appeal has been made, after the appeal is finally determined, as the case may be, publish a summary of the finding and order of a Solicitors Disciplinary Tribunal and the name of the solicitor **legal practice entity** who was the subject of the finding and order in any publication produced by, or at the direction of, the Society. [*Statute Law (Miscellaneous Provisions) Bill 2012*] [*Statute Law (Miscellaneous Provisions) Ordinance 2012*]
- (2) For the purposes of subsection (1), an appeal to the Court of Appeal shall be deemed to be finally determined when the earliest of the following event occurs, whichever is applicable in the circumstances -
- (a) when the appeal to the Court of Appeal is withdrawn or abandoned;
 - (b) when the specified period expires without an application for leave to appeal having been made to the Court of Appeal;
 - (c) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Appeal -
 - (i) when the application is withdrawn or abandoned;
 - (ii) if the application is refused, when the specified period expires without an application for leave to appeal having been made to the Court of Final Appeal; or
 - (iii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of; or
 - (d) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Final Appeal -
 - (i) when the application is withdrawn, abandoned or refused; or
 - (ii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of.
- (3) In subsection (2) -

“application for leave to appeal” (上訴許可申請) means an application made to the

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Court of Appeal or the Court of Final Appeal under section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) for leave to appeal to the Court of Final Appeal from a judgment of the Court of Appeal;

“specified period” (指明限期) –

- (a) in the case of an application for leave to appeal made to the Court of Appeal, means –
 - (i) subject to subparagraph (ii), the period of 28 days within which the notice of motion referred to in section 24(2) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or
 - (ii) if, on an application made within the 28-day period referred to in subparagraph (i), the Court of Appeal extends that period, the period as so extended; or
- (b) in the case of an application for leave to appeal made to the Court of Final Appeal, means –
 - (i) subject to subparagraph (ii), the period of 28 days within which the notice of motion referred to in section 24(4) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or
 - (ii) if, on an application made within the 28-day period referred to in subparagraph (i), the Court of Final Appeal extends that period, the period as so extended.

14. (Repealed)

15. (Repealed)

16. Restrictions on powers to strike names off roll

- (1) No solicitor shall be liable to have his name struck off the roll of solicitors on account of any failure to comply with such requirements with respect to employment as a trainee solicitor as may be prescribed by the Chief Justice or on account of any defect in his admission and enrolment, unless the application to strike his name off the roll of solicitors is made within 12 months after the date of his enrolment:

Provided that this subsection shall not apply in any case where fraud is proved to have been committed in connection with the failure or defect.

- (2) No solicitor shall be liable to have his name struck off the roll of solicitors by reason only that-

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- (a) a solicitor who employed him or acted as his principal for the whole term or such part of a term of a trainee solicitor contract as may be prescribed by the Chief Justice has neglected or omitted to take out a practising certificate in accordance with the provisions of section 6; or
- (b) the name of a solicitor who employed him as a trainee solicitor or acted as his principal for any period has after the termination of that period been struck off the roll of solicitors.

17. Council may inspect proceedings in bankruptcy

- (1) The Council shall be entitled, without payment of any fee, to inspect the file of proceedings in bankruptcy relating to any solicitor or foreign lawyer against whom proceedings in bankruptcy have been taken, and to be supplied with office copies of the proceedings on payment of the usual charges for such copies. *[Ord. No. 94 of 1997]*
- (2) ***The Council is entitled, without payment of a fee, to inspect the file of proceedings relating to the winding up by the Court of a solicitor corporation under the Companies Ordinance (Cap. 32) and to be supplied with office copies of the proceedings on payment of the prescribed charges (if any) for those copies. [Ord. No. 94 of 1997]***

18. Winding-up, etc. of business of solicitors struck off or suspended

- (1) The Court may make an order for the winding-up of the business of any solicitor who is struck off the roll of solicitors or of any foreign lawyer whose registration is cancelled in such terms and appointing such solicitor or firm of solicitors or the Official Receiver under the Bankruptcy Ordinance (Cap. 6) or both as it thinks fit for that purpose.
- ~~(2) The Court may make an order appointing any solicitor or firm of solicitors or the Official Receiver or both to manage the business of any solicitor, whose practising certificate is suspended, for the duration of such suspension.~~
- ~~(3) The Court may make an order appointing a solicitor, firm, foreign lawyer, foreign firm, the Officer Receiver or any combination of them to manage the business of a foreign lawyer whose registration is suspended, for the duration of the suspension.~~
- (2) ***If a solicitor's practising certificate is suspended, the Court may make an order appointing a solicitor, a firm of solicitors or a solicitor corporation or the Official Receiver, or any two of or more of them, to manage the business of the solicitor while the certificate is suspended. [Ord. No. 94 of 1997]***
- (3) ***If the approval of a solicitor corporation under section 7C is suspended, the Court may make an order appointing a solicitor, firm of solicitors, solicitor corporation or the Official Receiver, or any two or more of them, to manage the business of the corporation while its approval is suspended. [Ord. No. 94 of 1997]***

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- (4) ***If the registration of a foreign lawyer, foreign firm or foreign lawyer corporation is suspended, the Court may make an order appointing a solicitor, firm of solicitors, solicitor corporation, foreign lawyer, foreign firm or foreign lawyer corporation or the Official Receiver, or any two or more of them, to manage the business of the foreign lawyer, foreign firm or foreign lawyer corporation while the registration is suspended. [Ord. No. 94 of 1997]***

19. Removal from roll

- (1) Upon reasonable cause being shown to the Council by a solicitor the Council may direct the Registrar to remove the name of such solicitor from the roll of solicitors and the Registrar shall thereupon remove such name from the roll of solicitors.

- (1AA) ***On reasonable cause being shown to the Council by a solicitor corporation, the Council may cancel the approval of the corporation under section 7C. The Secretary General of the Society must record the cancellation in the roll of solicitor corporations as soon as practicable after becoming aware of the cancellation. [Ord. No. 94 of 1997]***

- (1A) Upon reasonable cause being shown to the Council by a foreign lawyer ~~or foreign firm,~~ ***foreign firm or foreign lawyer corporation***, the Council may direct the Secretary General of the Society to cancel the registration of the foreign lawyer ~~or foreign firm,~~ ***foreign firm or foreign lawyer corporation*** and the Secretary General shall then cancel the registration. ***[Ord. No. 94 of 1997]***

- (2) With effect from the date of removal of a name under this section the person whose name is so removed shall cease to be a solicitor.

- ~~(3) Upon application being made for removal or cancellation as aforesaid the Council may advertise or require the solicitor, foreign lawyer or foreign firm to advertise the application inviting any person who objects thereto to make objection to the Council.~~

- (3) ***When an application is made to the Council to take action under subsection (1), (1AA) or (1A), the Council may advertise the application, or require the legal practice entity concerned to advertise the application, in a specified publication, together with a notice inviting any person who wishes to object to the application to lodge an objection in writing with the Council before a specified date. [Ord. No. 94 of 1997]***

- (4) Where the Registrar is satisfied that a person who was admitted as a solicitor under section 3(1AD) before the repeal of that provision by the Legal Practitioners (Amendment) Ordinance 1994 (60 of 1994) would no longer be qualified under paragraph (a) of that provision if it were still in force, he shall, unless the person has become qualified otherwise under this Ordinance, remove his name from the roll of solicitors.

- (5) Without prejudice to the generality of subsection (1), where a person admitted under

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section 3(1AB) before that and related provisions ceased to have effect by virtue of section 75(2) does not commence practice as a solicitor within a period of 12 months after his admission, it shall be a cause for the removal of his name from the roll of solicitors under this section.

20. Restrictions on employing trainee solicitors

- (1) No person who has not at some time been in continuous practice as a solicitor in Hong Kong for a period of 5 years shall, without the special leave in writing of the Society, employ a trainee solicitor or act as his principal.
- (2) No person shall employ or act as principal for more than 2 trainee solicitors at the same time.
- (3) No person shall employ a trainee solicitor or act as his principal ~~unless he is practising as a solicitor on his own account or in partnership, without the special leave in writing of the Society.~~ without the special leave in writing of the Society unless the person-
 - (a) is practising as a solicitor on the person's own account or in partnership; or
 - (b) is a director of a solicitor corporation.

[Statute Law (Miscellaneous Provisions) Ordinance 2012
- (4) If any solicitor employs or acts as principal for a trainee solicitor in contravention of any of the provisions of subsection (1), (2) or (3), the Council may terminate the trainee solicitor's contract upon such terms as it thinks fit.
- (4A) It is not a contravention of subsection (1), (2) or (3) for a person other than a solicitor to employ a trainee solicitor so long as -
 - (a) the trainee solicitor is assigned to a solicitor who acts as his principal;
 - (b) the solicitor who acts as principal is qualified under and complies with subsections (1), (2) and (3); and
 - (c) the solicitor is employed by the same person as the trainee solicitor.
- (5) Any-
 - (a) solicitor; or
 - (b) qualified person,
serving in the-
 - (i) Department of Justice; or
 - (ii) the Legal Advisory and Conveyancing Office of the Lands Department;

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or

- (iia) the Land Registry; or
- (iib) the Companies Registry; or
- (iii) Legal Aid Department; or
- (iv) Official Receiver's Office; or
- (v) Intellectual Property Department,

of the Government shall, for the purpose of this section, be deemed to be practising as a solicitor on his own account; and this subsection shall apply in relation to periods before as well as periods after the commencement of the Legal Practitioners (Amendment) Ordinance 1982.

(6) (Repealed)

(7) (Repealed)

21. Power to prohibit employing trainee solicitors

- (1) Where the Society refuses to issue a practising certificate to a solicitor under section 6, the Council may by notice in writing to that solicitor prohibit him from employing a trainee solicitor or acting as the principal of a trainee solicitor.
- (2) (Repealed)

22. Power to discharge articles in certain cases

If either-

- (a) during the term of a trainee solicitor contract a trainee solicitor has been continuously absent from the place of business of his principal for a period of 3 months or such longer period as may be prescribed by the Council except for such reason as may be prescribed by the Council; or
- (b) the Council is for any other reason of the opinion that a trainee solicitor contract ought to be terminated,

the Council may, on application of the solicitor, the trainee solicitor or any other person, terminate the trainee solicitor contract on such terms as it shall think fit and may determine what, if any, of the period of employment of the trainee solicitor shall be effective for the purposes of this Ordinance.

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23. Termination of trainee solicitor contracts in cases of bankruptcy, etc.

~~(1)~~³ If a solicitor who employs a trainee solicitor or acts as his principal becomes bankrupt before the expiration of the trainee solicitor contract or is imprisoned for debt and remains in prison for more than 21 days, the Court, on the application of any person, may order the trainee solicitor contract to be terminated or to be assigned to another solicitor ~~or to a solicitor corporation~~ on such terms and in such manner as the Court thinks fit. [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

~~(2) — If a solicitor corporation who employs a trainee solicitor, or acts as principal of a trainee solicitor, is or will be dissolved before the trainee solicitor contract expires, the Court may, on the application of any person, order the trainee solicitor contract to be terminated or to be assigned to a solicitor or another solicitor corporation on such terms and in such manner as the Court thinks fit. [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Ordinance 2012]~~

24. Society's general right of audience

The Society shall have a general right of audience by any member of the Society appointed for that purpose by the Society or by any counsel, before -

- (a) a Solicitors Disciplinary Tribunal; and
- (b) the Court on the hearing of any matter under this Ordinance that does not solely affect barristers,

and in any such case, whether the Society has or is seeking audience or not, the Society shall be served with a copy of every necessary document filed with the Registrar.

25. Expenses of Solicitors Disciplinary Tribunal and of Society

(1) The expenses incurred by -

- (a) a Solicitors Disciplinary Tribunal; and
- (b) the Society, in connection with proceedings before a Solicitors Disciplinary Tribunal and any appeal under section 13, **the Court of Appeal and the Court of Final Appeal**, [Statute Law (Miscellaneous Provisions) Ordinance 2012]

may be paid to the Society out of general revenue upon a certificate issued by the Secretary for Justice.

(2) The Secretary for Justice shall only issue a certificate under subsection (1) if he is satisfied that -

³ See item 3(iii) of the minutes on 14/05/12

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- (a) the expenses were necessarily incurred by the Solicitors Disciplinary Tribunal or the Society, as the case may be, in exercise of the powers or duties conferred or imposed by this Ordinance;
 - (b) the amount of such expenses is reasonable; and
 - (c) the expenses could not reasonably be recovered from the person whose conduct is the subject of the proceedings before the Solicitors Disciplinary Tribunal ~~or the Court of Appeal~~, **the Court of Appeal or the Court of Final Appeal**, as the case may be. [*Statute Law (Miscellaneous Provisions) Ordinance 2012*]
- (3) In this section, "expenses" (開支) includes witnesses' expenses and fees, counsel's fees, solicitor's fees, auditor's fees and other charges and disbursements.

26. Statutory provisions to prevail over Society's articles

In the case of any inconsistency between the provisions of this Ordinance and the Memorandum and Articles of Association of the Society the provisions of this Ordinance shall prevail.

26AA. (Repealed)

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PART IIA

CIRCUMSTANCES IN WHICH LAW SOCIETY MAY INTERVENE

26A. Circumstances in which powers conferred by Schedule 2 exercisable

(1) Subject to subsection (2), the powers conferred by Schedule 2 shall be exercisable where

- (a) the Council has reason to suspect dishonesty on the part of -
 - (i) a solicitor or foreign lawyer; or
 - (ii) an employee or a trainee solicitor of a solicitor or a foreign lawyer; or
 - (iii) the personal representatives of a deceased solicitor or foreign lawyer, in connection with that solicitor's or foreign lawyer's practice or in connection with any trust of which that solicitor or foreign lawyer immediately before the date of his death or formerly was a trustee,

and the Council considers the exercise of those powers is in the interests of the public or the clients of the solicitor or foreign lawyer;

- (b) the Council considers that there has been undue delay on the part of the personal representatives of a deceased solicitor or foreign lawyer who immediately before his death was practising as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name in connection with that solicitor's or foreign lawyer's practice or in connection with any controlled trust;
- (c) the Council is satisfied that a solicitor or foreign lawyer has failed to comply with rules made by virtue of section 73(1)(b) or 73A;
- (d) a solicitor or foreign lawyer has become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6);
- (e) a solicitor or foreign lawyer has been committed to prison in any civil or criminal proceedings;
- (f) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name is incapacitated by illness or accident to such an extent as to be unable to attend to his practice;
- (g) the powers conferred by section 10D of the Mental Health Ordinance (Cap. 136) (emergency powers) or section 11 of that Ordinance (appointment of committee) have been exercised in respect of a solicitor or foreign lawyer;

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- (h) the name of a solicitor has been removed from or struck off the roll or a solicitor has been suspended from practice or the registration of a foreign lawyer is cancelled or suspended;
 - (i) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name has abandoned his practice;
 - (j) the Council is satisfied that a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name is incapacitated by age to such an extent as to be unable to attend to his practice;
 - (k) any power conferred by this Part and Schedule 2 has been exercised by virtue of paragraph (a) in relation to a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name and he has acted as a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name within the period of 18 months beginning with the date on which it was so exercised;
 - (l) the Council is satisfied that a person has acted as a solicitor at a time when he did not have a practising certificate which was in force;
 - (m) the Council is satisfied that a solicitor has failed to comply with any condition, subject to which his practising certificate was granted or otherwise has effect, to the effect that he may act as a solicitor only -
 - (i) in employment which is approved by the Council in connection with the imposition of that condition;
 - (ii) as a member of a partnership which is so approved; or
 - (iii) in any specified combination of those ways;
 - (n) the Council is satisfied that a solicitor or foreign lawyer has failed to make satisfactory arrangements within 21 days from the date of the closure of his practice.
- (2) The powers conferred by Schedule 2 shall only be exercisable under subsection (1)(c), (j), (k), (l) and (m) if the Council has given the solicitor notice in writing that the Council is satisfied that he has failed to comply with rules specified in the notice and also (at the same or any later time) notice that the powers conferred by Schedule 2 are accordingly exercisable in his case.

(2A) Subject to subsection (2B), the powers conferred by Schedule 2 are also exercisable in relation to a solicitor corporation or foreign lawyer corporation where —

(a) the Council has reason to suspect dishonesty on the part of the corporation,

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or any officer, employee or trainee solicitor of the corporation; or

- (b) the Council is satisfied that the corporation has failed to comply with rules made by virtue of section 73(1)(b) or 73A; or*
- (c) a person is appointed as a receiver or manager of property of the corporation; or*
- (d) the corporation is ordered to be wound up by the Court or a resolution is passed for the voluntary winding up of the corporation (other than a resolution passed only for reconstructing the corporation or amalgamating it with another body corporate) or, if the corporation is an overseas a non-Hong Kong company, is the subject of liquidation proceedings in the country where it is incorporated; or [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
- (e) a solicitor or foreign lawyer who is a member of the corporation has been committed to prison in any civil or criminal proceedings and the Council is satisfied that there is no other solicitor or foreign lawyer who is a member of the corporation able to conduct the corporation's practice; or*
- (f) the Council is satisfied that a solicitor or foreign lawyer who is a member of the corporation is incapacitated by illness or accident to such an extent as to be unable to conduct the practice and there is no other solicitor or foreign lawyer able to conduct the corporation's practice; or*
- (g) the powers conferred by section 98 of the Mental Health Act 1983 (1983 c. 20 U.K.) (Emergency powers) or section 99 of that Act (Appointment of a receiver) have been exercised in respect of a solicitor or foreign lawyer who is a member of the corporation and the Council is satisfied that there is no other solicitor or foreign lawyer who is a member of the corporation able to conduct the corporation's practice or;*
- (h) the name of a solicitor who is a member of the corporation has been removed from or struck off the roll of solicitors or such a solicitor has been suspended from practice, or the registration of a foreign lawyer who is a member of the corporation is cancelled or suspended, and the Council is satisfied that there is no other solicitor or foreign lawyer who is a member of the corporation able to conduct the corporation's practice; or*
- (i) the Council is satisfied that a solicitor or foreign lawyer who is a member of the corporation has abandoned the corporation's practice and that there is no other solicitor or foreign lawyer who is a member of the corporation able to conduct that practice; or*
- (j) the Council is satisfied that a solicitor or foreign lawyer who is a member of the corporation is incapacitated by age to such an extent as to be unable to conduct the corporation's practice and that there is no other solicitor or foreign lawyer who is a member of the corporation able to conduct that*

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practice; or

(k) the Council is satisfied that the corporation has carried on its practice when no member of the corporation was holding a solicitor's practising certificate or, as the case may be, was registered as a foreign lawyer; or

(l) the Council is satisfied that the corporation has failed to comply with any condition that is a condition of its approval as a solicitor corporation or of its registration as a foreign lawyer corporation; or

(m) the Council is satisfied that the corporation has failed to make satisfactory arrangements with respect to the corporation's clients within 21 days after the date of closure of the corporation's practice.

(2B) The powers conferred by Schedule 2 are exercisable under subsection (2A)(b), (j), (k) and (l) only if the Council has given the solicitor corporation or foreign lawyer corporation notice in writing that the Council is satisfied that the corporation has failed to comply with rules specified in the notice and also (at the same or any later time) notice that those powers are accordingly exercisable in respect of the corporation. [Ord. No. 94 of 1997]

(3) In this Part and Schedule 2 -

"controlled trust" (**受控制信託**), in relation to a solicitor or foreign lawyer, means a trust of which he is a sole trustee or co-trustee only with one or more of his partners, employees or trainee solicitors; [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Ordinance 2014]

"trust" (**信託**) includes an implied or constructive trust and a trust where the trustee has a beneficial interest in the trust property, and also includes the duties incidental to the office of a personal representative, and "trustee" (**受託人**) shall be construed accordingly.

26B. Death of sole solicitor or foreign lawyer

On the death of a solicitor or foreign lawyer who practises as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name sections 2, 3 and 4 of Schedule 2 shall apply to the client accounts of his practice.

26C. Undue delay by ~~solicitors or foreign lawyers~~⁴ legal practice entities⁵ in connection with clients' instructions [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

⁴ See item 3 of the minutes on 14/05/12

⁵ See item 3 of the minutes on 14/05/12

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The powers conferred by Schedule 2 shall also be exercisable, subject to sections 1(4) and 8(3) of that Schedule, where -

- (a) a complaint is made to the Council that there has been undue delay on the part of a solicitor or foreign lawyer in connection with any matter in which the solicitor or his firm or the foreign lawyer or his firm was instructed on behalf of a client or with any controlled trust; and⁶

~~(a) — a complaint is made to the Council that there has been undue delay on the part of a legal practice entity in connection with any matter in respect of which the entity was instructed on behalf of a client or in connection with any controlled trust; and⁷ [Ord. No. 94 of 1997]~~

- (b) the Council by notice in writing invites the solicitor or foreign lawyer⁸ ~~entity~~⁹ to give an explanation within a period of not less than 8 days specified in the notice; and [Ord. No. 94 of 1997]

- (c) the solicitor or foreign lawyer¹⁰ ~~entity~~¹¹ fails within that period to give an explanation which the Council regards as satisfactory; and [Ord. No. 94 of 1997]

- (d) the Council gives notice of the failure to the solicitor or foreign lawyer¹² ~~entity~~¹³ and (at the same or any later time) notice that the powers conferred by Schedule 2 are accordingly exercisable. [Ord. No. 94 of 1997]

26D. Powers conferred by Schedule 2 exercisable after death of solicitor

- (1) Where the powers conferred by Schedule 2 are exercisable in relation to a solicitor or foreign lawyer, they shall continue to be exercisable after his death or after his name has been removed from or struck off the roll (in the case of a solicitor) or his registration is cancelled or suspended (in the case of a foreign lawyer).

- (2) — The references to the solicitor or his firm or the foreign lawyer or his firm in sections 1(1), 2(2) and (3), 3, 7(1) and (5) and 8(1) of Schedule 2 include, in any case where the solicitor or foreign lawyer has died, references to his personal representatives.

~~(2) — Where the powers conferred by Schedule 2 are exercisable in relation to a solicitor corporation or a foreign lawyer corporation, they continue to be exercisable after —~~

⁶ See item 3 of the minutes on 14/05/12

⁷ See item 3 of the minutes on 14/05/12

⁸ See item 3 of the minutes on 14/05/12

⁹ See item 3 of the minutes on 14/05/12

¹⁰ See item 3 of the minutes on 14/05/12

¹¹ See item 3 of the minutes on 14/05/12

¹² See item 3 of the minutes on 14/05/12

¹³ See item 3 of the minutes on 14/05/12

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- (a) the approval of the solicitor corporation; or***
- (b) the registration of the foreign lawyer corporation,
has been cancelled or suspended.***
- (3) In relation to a deceased person who was, immediately before death, a legal practice
entity, the references to such an entity in sections 1(1), 2(2) and (3), 3, 7(1) and (5)
of Schedule 2 include references to the entity's personal representatives. [Ord. No.
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PART III

BARRISTERS

27. Power of Court to admit barristers

(1) Subject to subsection (2), the Court may, in such manner as may be prescribed by the Chief Justice, admit as a barrister of the High Court in Hong Kong, a person whom it considers a fit and proper person to be a barrister, provided such person has —

- (a) complied with the requirements;
- (b) passed the examinations; and
- (c) paid the fees, ~~or as a member or salaried employee of a solicitor corporation~~ **[Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]**

prescribed by the Bar Council.

(2) The Court shall not admit a person under subsection (1) unless it is satisfied that that person —

- (a) is not in practice as a solicitor either on his own account or as a partner or salaried employee in a firm of solicitors practising in Hong Kong ~~or as a member or salaried employee of a solicitor corporation~~; and **[Statute Law (Miscellaneous Provisions) Bill 2012]**
- (b) satisfies one of the following requirements —
 - (i) has resided in Hong Kong for at least 3 consecutive months immediately before the date of his application for admission;
 - (ii) has been ordinarily resident in Hong Kong for at least 7 years;
 - (iii) has been physically present in Hong Kong for at least 180 days of each of at least 7 years within the 10 years immediately preceding the date of his application for admission.

(3) If at the time of his admission under subsection (1) the person is a solicitor, the Registrar shall remove the person's name from the roll of solicitors.

(4) Notwithstanding that a person does not satisfy all the requirements specified in subsections (1) and (2)(b), where the Court considers that he is a fit and proper person to be a barrister and is satisfied that he has —

- (a) the qualification acquired outside Hong Kong to engage in work that would, if

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undertaken in Hong Kong, be similar to that undertaken by a barrister in the course of ordinary practice as a barrister in the High Court or Court of Final Appeal; and

- (b) substantial experience in advocacy in a court,

the Court may admit such person as a barrister under this section for the purpose of any particular case or cases and may impose such restrictions and conditions on him as it may see fit.

- (5) The Court may, when admitting a person as a barrister, sit in chambers.

27A. (Repealed)

28. Formalities for admission as a barrister

Except as may be prescribed by the Chief Justice, no person shall be admitted as a barrister unless he has deposited with the Registrar documentary evidence together with an affidavit showing the manner in which he satisfies the requirements specified in section 27(1) and (2).

29. Roll of barristers

- (1) The Registrar shall keep a roll of all barristers admitted by the Court under sections 27 and 27A and shall have custody of the roll of barristers and of all documents relating thereto and shall allow any person to inspect the roll of barristers during office hours without payment.
- (2) The Registrar, upon production of a certificate of admission signed by a Judge and upon payment to the Registrar of such fee as may be prescribed by the Chief Justice, shall enter upon the roll of barristers the name of the person enrolled.
- (2A) A barrister who was admitted pursuant to section 27(1) or section 27A may —
- (a) apply by motion to have his name removed from the roll of barristers; and
- (b) where he has had his name removed under paragraph (a), on giving at least 7 days' notice to the Bar Council, apply by motion to have his name restored to the roll of barristers.
- (2B) A barrister who was admitted pursuant to section 27(4) for a particular case or cases shall, on completion of such case or cases including any appeal relating thereto, be deemed to have had his name removed from the roll of barristers.
- (2C) Where a barrister has had his name removed from the roll of barristers under subsection (2A) or (2B), he shall forthwith surrender to the Bar Council any current practising certificate.

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- (3) (Repealed)

30. Practising certificates-barristers

- (1) The Bar Council, upon application in writing by a barrister and upon payment of such fee as may be prescribed by the Bar Council and upon being satisfied in such manner as may be prescribed by the Bar Council that the person to whom the application relates is qualified to practise as a barrister or is qualified to practise to a limited extent under section 31 (2), shall issue to the applicant a practising certificate as a barrister in such form as may be prescribed by the Bar Council for the period of one calendar year from 1 January next following the date of the application:

Provided that-

- (a) the Bar Council, in its absolute discretion and upon such condition as it may consider necessary, may permit the application for a practising certificate to be made under this subsection at any time and upon such application may issue to the applicant a practising certificate for any period not exceeding one calendar year and ending on 31 December in any year; and
- (b) where the name of a barrister is removed from or struck off the roll of barristers, the practising certificate of that barrister shall automatically determine without any entitlement to any refund of the prescribed fee or of any part thereof.
- (2) The publication in the Gazette by the Bar Council of a list of the names and addresses of those barristers who have obtained practising certificates for the period therein stated shall be prima facie evidence that each person named therein is a person qualified under section 31 to practise as a barrister and to whom a practising certificate for the period specified in such list has been issued under this section and the absence from any such list of the name of any person shall be prima facie evidence that such person is not so qualified.
- (3) A practising certificate may only be issued to an applicant who has paid to the Hong Kong Bar Association —
- (a) except where the Bar Council has exempted the applicant therefrom, the membership subscription; and
- (b) except where the applicant has been admitted as a barrister under section 27(4) and the Bar Council has exempted him therefrom, the premium prescribed for insurance of the applicant under the current master policy for professional indemnity insurance effected by the Hong Kong Bar Association,

in respect of the period for which the practising certificate is to be issued.

- (3A) On application by a barrister admitted under section 27(4), the Bar Council may waive part of the membership subscription.

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(4) (Repealed)

31. Qualifications for practising as barrister

- (1) A barrister shall not be qualified to practise as such -
- (a) subject to subsection (2), unless he has completed the prescribed qualifying period of active practice;
 - (b) unless he holds a valid practising certificate;
 - (c) having qualified for admission as a barrister by virtue of section 27(1)(a)(i) or (ii) (as that section existed before its repeal by the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000)), unless he continues to be a barrister in England or Northern Ireland or an advocate in Scotland and is not there suspended from practice as such;
 - (d) if he is suspended from practice under section 37;
 - (e) ~~if he is on the roll of solicitors;~~
 - (f) ~~if he is an employed barrister within the meaning of section 31C(1).~~

(e) if the barrister is enrolled as a on the roll of solicitors or is a member of a solicitor corporation; or [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

(f) if the barrister is a sole practitioner, or a member or salaried employee of a firm of solicitors, practising in the United Kingdom or is a member or salaried employee of a body corporate recognized under section 9 of the Administration of Justice Act 1985 (1985 c. 61 U.K.). [Ord. No. 94 of 1997]

- (2) After the expiry of the first 6 months of the prescribed qualifying period of active practice, a barrister shall be qualified to practise as a barrister to such limited extent as the Bar Council may determine.

31A. Appointment of Senior Counsel

- (1) The Chief Justice may, after consultation with the chairman of the Bar Council and the president of the Society, appoint as Senior Counsel barristers who satisfy the eligibility requirements of subsection (2).
- (2) A barrister is eligible for appointment as a Senior Counsel if he -
- (a) has, in the opinion of the Chief Justice, sufficient ability and standing as a barrister, and sufficient knowledge of the law, to be accorded that status; and

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- (b) has the requisite experience; and
 - (c) is practising at the bar in Hong Kong or is practising as an advocate while he holds office as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).
- (3) For the purposes of subsection (2)(b), a barrister has the requisite experience for appointment as a Senior Counsel if he has, for not less than 10 years in aggregate, done one or both of the following -
- (a) practised at the bar in Hong Kong; or
 - (b) practised as an advocate while he holds office as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).
- (4) The Chief Justice may, after consultation with the chairman of the Bar Council and the president of the Society, appoint a barrister as an honorary Senior Counsel if he -
- (a) is a member of the academic staff of a faculty or school of law of a university in Hong Kong; or
 - (b) holds office as a Director of Legal Aid or as a Deputy Director or Assistant Director of Legal Aid; or
 - (c) holds office as Official Receiver or an office specified in Part I of Schedule 2 to the Bankruptcy Ordinance (Cap. 6); or
 - (d) holds office as Director of Intellectual Property or an office specified in Part I of Schedule 1 to the Director of Intellectual Property (Establishment) Ordinance (Cap. 412),
- and who has, in the Chief Justice's opinion, provided distinguished service to the law of Hong Kong.
- (5) The appointment of a person as a Senior Counsel in an honorary capacity does not confer on the person a right to act as an advocate in proceedings before the courts of Hong Kong and will not accord precedence before the courts.

31B. Status of visiting Queen's Counsel

A Queen's Counsel of another jurisdiction who is appearing in legal proceedings before a court in Hong Kong is entitled to use the title, and to be accorded the status, of Senior Counsel for the purposes of those proceedings.

31C. Employed barristers

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- (1) In this section "employed barrister" (受僱大律師) means a barrister who, under a contract of employment, provides legal services exclusively to his employer.
- (2) An employed barrister may apply to the Bar Council for an employed barrister's certificate if -
 - (a) at any time, he has been issued a practising certificate under section 30; or
 - (b) he has completed the prescribed qualifying period of active practice; or
 - (c) he has been an employed barrister in Hong Kong for at least 12 months immediately preceding the date of his application.
- (3) An employed barrister may be issued an employed barrister's certificate and the provisions of sections 29(2C) and 30 ~~(except section 30(3)(b))~~ respecting practising certificates apply to employed barrister's certificates issued under this section and, for the purposes of this section, references in those sections to a barrister or a practising certificate shall be deemed to be references to an employed barrister and an employed barrister's certificate respectively. *[Statute Law (Miscellaneous Provisions) Ordinance 2012]*
- (4) The publication in the Gazette by the Bar Council of a list of the names and addresses of those barristers who have obtained employed barrister's certificates for the period therein stated shall be prima facie evidence that each person named therein is the holder of such a certificate for the period specified in such list, and the absence from any such list of the name of any person shall be prima facie evidence that the person does not hold such a certificate.
- (5) An employed barrister who holds a current employed barrister's certificate may, on behalf of his employer but for the purpose of obtaining a legal opinion only, instruct a barrister who holds a current practising certificate, without retaining a solicitor.

32. (Repealed)

33. Bar Council - general right of audience

The Bar Council shall have a general right of audience, by any member of the Bar Council appointed for that purpose by the Bar Council or by any other counsel -

- (a) before a Barristers Disciplinary Tribunal; and
- (b) before the Court on the hearing of -
 - (i) any application to the Court for admission and enrolment as a barrister; and
 - (ii) any proceedings in the Court relating to, affecting or touching any matter

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affecting the qualification or examination of a person seeking to be a barrister or affecting the privileges, restrictions or offences in connection with the professional practice, conduct and discipline of a barrister,

and in any such case, whether the Bar Council has or is seeking audience or not, the Bar Council shall be served with a copy of every necessary document filed with the Registrar.

34. Barristers Disciplinary Tribunal Panel

- (1) The Chief Justice is required to appoint a Barristers Disciplinary Tribunal Panel consisting of -
 - (a) no fewer than 6 and no more than 15 practising Senior Counsel of Hong Kong; and
 - (b) no fewer than 6 and no more than 20 other practising barristers of at least 7 years' standing; and
 - (c) no fewer than 5 and no more than 25 lay persons who are not, in the opinion of the Chief Justice, in any way connected with the practice of the law.
- (2) A member of the Bar Council is not eligible to be appointed to or remain on the Panel.
- (3) A person appointed to the Panel shall be appointed for a term specified by the Chief Justice not to exceed 5 years but may be reappointed for a further term or terms.
- (4) The Chief Justice shall appoint one of the barristers on the Panel as the Tribunal Convenor for a 3 year term and he may appoint one or more other barristers on the Panel as Deputy Tribunal Convenors for 3 year terms.
- (5) A Deputy Tribunal Convenor designated by the Tribunal Convenor may act in place of the Tribunal Convenor whenever the Tribunal Convenor is prevented from exercising the Tribunal Convenor's functions because of illness, absence from Hong Kong or any other cause.

35. Complaint about barrister's conduct

- (1) Where the Bar Council considers that the conduct of a barrister should be inquired into as a result of a complaint being made to it or otherwise, the Bar Council shall submit the matter to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel.
- (2) Where a complaint is made to the Bar Council and the Bar Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Bar Council ought to have done so.

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- (3) A matter submitted to the Tribunal Convenor must include or be accompanied by particulars of the conduct that is to be inquired into and by particulars of any associated allegations of misconduct.

35A. Barristers Disciplinary Tribunal

- (1) On receiving a submission under section 35, the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel is required to appoint from the Panel –
- (a) a Senior Counsel; and
 - (b) a barrister who is not a Senior Counsel; and
 - (c) a lay person.
- (2) The persons so appointed constitute a Barristers Disciplinary Tribunal to inquire into the conduct of the barrister concerned.
- (3) When constituting a Barristers Disciplinary Tribunal, the Tribunal Convenor is also required to appoint one of its members as chairman of the Tribunal.
- (4) A Barristers Disciplinary Tribunal may be constituted by the chairman and by one other member designated by the chairman for the purposes only of –
- (a) giving directions or making orders for the conduct of an inquiry under section 36; and
 - (b) announcing the findings of the Tribunal with respect to the inquiry.
- (5) A member of a Barristers Disciplinary Tribunal who becomes a member of the Bar Council ceases to be a member of the Tribunal.

35B. Sittings of Barristers Disciplinary Tribunal

- (1) A Barristers Disciplinary Tribunal is required to sit at such places and at such times as the chairman of the Tribunal directs.
- (2) A Barristers Disciplinary Tribunal is required to hold its proceedings in camera, except when the barrister whose conduct is being inquired into requests that the proceedings be open to the public.

36. Powers of Barristers Disciplinary Tribunal

- (1A) A Barristers Disciplinary Tribunal may inquire into the conduct of any person in respect of which it was constituted.

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- (1) For the purpose of conducting an inquiry, a Barristers Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters -
 - (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
 - (b) compelling the production of documents;
 - (c) punishing persons guilty of contempt;
 - (d) ordering an inspection of any property;
 - (e) conducting every examination of witnesses; and
 - (f) adjourning any meeting from time to time and from one place to another,and a summons under the hand of the chairman of a Barristers Disciplinary Tribunal may be substituted for and shall be equivalent to any form of process capable of being issued in any action or suit for compelling the attendance of witnesses or the production of documents and any warrant of committal to prison issued for the purpose of enforcing any such powers must be signed by the chairman but must not authorize the imprisonment of any offender for a period exceeding 1 month.
- (2) The Commissioner of Police and all police officers, officers of the court, gaolers and bailiffs of the court are required to give their utmost assistance to every Barristers Disciplinary Tribunal and to every chairman thereof, in the enforcement of documents, warrants and orders issued in accordance with subsection (1) or otherwise.
- (3) Every member of a Barristers Disciplinary Tribunal shall have the like protection and privileges, in relation to any action or suit brought against him for any act done or omitted to be done in the execution of his duties as such member, as is given by any law to a magistrate acting in the execution of his office.
- (4) All proceedings of a Barristers Disciplinary Tribunal are privileged.
- (5) A Barristers Disciplinary Tribunal constituted to inquire into the conduct of a person may inquire into other conduct of the person, but only if -
 - (a) the person has been given reasonable notice and adequate particulars of that other conduct; and
 - (b) the Tribunal is satisfied that that other conduct is related to the first-mentioned conduct.
- (6) The power conferred by subsection (5) is exercisable only on the application of -
 - (a) the Bar Council in the case of a matter submitted to the Tribunal Convenor under section 35(1); or

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- (b) the Chief Judge in the case of a matter submitted to the Tribunal Convenor under section 35(2).
- (7) Notice is not reasonable for the purposes of subsection (5) if it is less than 7 days.
- (8) A Barristers Disciplinary Tribunal may make such order as to the payment by a party to an inquiry of the costs incurred in conducting the inquiry as it thinks just. Such an order may direct that the costs are to be taxed by a Master of the High Court on a full indemnity basis.

37. Disciplinary powers of Barristers Disciplinary Tribunal

On completion of its inquiry, the Barristers Disciplinary Tribunal may do one or more of the following -

- (a) censure the barrister;
- (b) suspend the barrister from practising for a period it specifies;
- (c) order that the barrister's name be struck off the roll of barristers;
- (d) order the barrister to pay to the complainant an amount not exceeding the amount or amounts paid or payable to the barrister in relation to the complainant's matters in dispute;
- (e) order the barrister to pay a penalty not exceeding \$500,000, which shall be paid into the general revenue;
- (f) order the barrister to pay the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or an amount that the Tribunal considers to be a reasonable contribution towards those costs;
- (g) make any other order it thinks fit.

37A. Findings of a Barristers Disciplinary Tribunal

- (1) An order made by a Barristers Disciplinary Tribunal shall include a statement of its findings in relation to the facts of the case and shall be signed by the chairman or by a member authorized by the Tribunal.
- (2) A signed copy of an order of a Tribunal shall be filed with the Registrar who shall enter a note of the order on the roll of barristers against the name of the barrister and, where the order so directs, the Registrar shall strike off the name and shall publish an order for suspension or striking off in the Gazette within 14 days after receiving a copy of the order.

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- (3) The Tribunal that heard the matter or a Tribunal constituted for the purpose by the Tribunal Convenor may, on the application of a party against whom an order for payment is made, order that payment may be paid by instalments or be deferred for a period the Tribunal considers appropriate.
- (4) An application for an order for payment by instalments, or for the deferring of payment, may be made at the hearing or, within 14 days after the date of the order for payment, by notice in writing to the Tribunal Convenor and to all parties who were represented at the Tribunal hearing.
- (5) On receipt of a notice under subsection (4), the Tribunal Convenor shall, within 14 days, notify the applicant and the other parties of the date on which the application will be heard by a Tribunal.
- (6) There is no right of appeal from the decision of the Tribunal on an application under subsection (4).
- (7) Payment of an amount ordered to be paid by the Tribunal may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the chairman or other authorized member of the Tribunal and the rules of the Court, so far as applicable, apply to the order.
- (8) No order under subsection (7) shall be enforced until after the 14 days referred to in subsection (4) has elapsed or until after the Tribunal has made its decision under subsection (3).

37B. Appeal to Court of Appeal

- (1) A person who is the subject of an order under section 37 or 38 may appeal to the Court of Appeal and Order 59 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the appeal except that the time for serving the notice of appeal is 21 days from the date of the decision and not 28 days as provided in Order 59.
- (2) In an appeal under this section the Bar Council shall be the respondent.
- (3) The hearing of an appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal otherwise directs.

38. Variation of order of the Barristers Disciplinary Tribunal

- (1) Any barrister who has been suspended from practising or whose name has been struck off the roll may apply to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel to have a Barristers Disciplinary Tribunal constituted for the purpose of hearing his application to vary or discharge the order suspending him or striking his name off the roll.

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- (2) No application shall be made under subsection (1) -
- (a) in the case of an order of suspension, until the expiration of 2 years from the date of such order or of half the period of suspension, whichever is the less; or
 - (b) in the case of an order striking the name of the barrister off the roll, until the expiration of 2 years from the date of such order,

and in either case where such an application has been made and determined, no further application shall be made until the expiration of 2 years from the date of such determination:

Provided that the barrister may at any time apply on the grounds that new material facts have come to light since the making of the order which it is sought to vary or discharge, and where the Tribunal Convenor is of the opinion that such facts should be placed before a Barristers Disciplinary Tribunal, he shall grant such application.

- (3) At the hearing of the application the Barristers Disciplinary Tribunal may -
- (a) reduce the period of suspension; or
 - (b) discharge the order of suspension or the order striking the name of the barrister off the roll, as the case may be; or
 - (c) confirm the original order; and
 - (d) make such order as to costs as it shall see fit.

39. Expenses of Barristers Disciplinary Tribunal and of Bar Council

- (1) The expenses incurred by-
- (a) a Barristers Disciplinary Tribunal; and
 - (b) the Bar Council, in connection with proceedings before a Barristers Disciplinary Tribunal and any proceedings under section 37B, **the Court of Appeal and the Court of Final Appeal, [Statute Law (Miscellaneous Provisions) Ordinance 2012]**

may be paid to the Bar Council out of general revenue upon a certificate issued by the Secretary for Justice.

- (2) The Secretary for Justice shall only issue a certificate under subsection (1) if he is satisfied that -
- (a) the expenses were necessarily incurred by the Barristers Disciplinary Tribunal or the Bar Council, as the case may be, in exercise of the powers or duties

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conferred or imposed by this Ordinance;

- (b) the amount of such expenses is reasonable; and
 - (c) the expenses could not reasonably be recovered from the barrister whose conduct is the subject of the proceedings before the Barristers Disciplinary Tribunal or the Court of Appeal, **the Court of Appeal or the Court of Final Appeal**, as the case may be. [*Statute Law (Miscellaneous Provisions) Ordinance 2012*]
- (3) In this section, "expenses" (開支) includes witnesses' expenses and fees, counsel's fees, solicitor's fees, auditor's fees and other charges and disbursements.

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PART IIIA

**FOREIGN LAWYERS AND FOREIGN FIRMS, FOREIGN FIRMS AND FOREIGN
LAWYER CORPORATIONS [Ord. No. 94 of 1997]**

39A. Foreign lawyers

- (1) The Society may register as a foreign lawyer a person who, not being a solicitor who holds a practising certificate or a barrister who holds a practising certificate, is qualified to practise foreign law.
- (2) Solicitor-client privilege exists between a foreign lawyer and his client to the same extent as the privilege exists between a solicitor and his client.
- (3) Where a foreign lawyer becomes bankrupt the registration of the foreign lawyer is automatically cancelled.

39B. Foreign firms

- (1) The Society may register as a foreign firm a firm -
 - (a) in which all of the partners who intend to practise in Hong Kong are foreign lawyers or the sole practitioner of which is a foreign lawyer; and
 - (b) that intends to have within 2 months after registration, a place of business in Hong Kong for the purpose of practising or advising on foreign law.
- (2) Where a firm was registered as a foreign firm on the basis of an intention referred to in subsection (1)(b) but fails to establish a place of business in Hong Kong within 2 months after its registration, the Society may cancel the firm's registration.

39BA. Foreign lawyer corporations

- (1) *The Society may register as a foreign lawyer corporation a company or an ~~an~~ overseas non-Hong Kong company if – [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
 - (a) *all of the members or employees of the company who intend to practise in Hong Kong are foreign lawyers; and*
 - (b) *the company satisfies the Society that it has, or will within 2 months after registration have, a place of business in Hong Kong for the purpose of practising or advising on foreign law.*
- (2) *The Society may cancel the registration of a foreign lawyer corporation if –*

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- (a) *the corporation, having established a place of business in Hong Kong, ceases to have a place of business there; or*
 - (b) *fails to establish a place of business in Hong Kong within 2 months after its registration.*
- (3) *The registration of a company or an ~~oversea~~ a non-Hong Kong company as a foreign lawyer corporation is automatically cancelled if the company (not being an ~~oversea~~ a non-Hong Kong company) is dissolved or, in the case of an ~~oversea~~ a non-Hong Kong company, the Registrar of Companies removes the name of the company from the register of ~~oversea~~ non-Hong Kong companies. [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
- (4) *The approval in writing of the Council is required before –*
- (a) *the constitution of a foreign lawyer corporation is amended; or*
 - (b) *the name of a foreign lawyer corporation is changed.*
- (5) *Rules in force for the purposes of section 7G also apply to and in respect of a foreign lawyer corporation that is a company.*
- (6) *Solicitor-client privilege exists between a foreign lawyer corporation and a client of the corporation in the same way as it exists between a solicitor and a client of the solicitor.*
- (7) *This section, and rules made under sections 72 and 73 for the purposes of this section, prevail over inconsistent provisions of the constitution of a foreign lawyer corporation.*
- (8) *In this section –*
- “company” (公司) means a company formed and approved under the Companies Ordinance (Cap. 32);*
- “constitution” (章程), in relation to a foreign lawyer corporation that is a company, means the memorandum and articles of association of the company;*
- “oversea non-Hong Kong company” (海外非香港公司) has the same meaning as in section 332 of the Companies Ordinance (Cap. 32). [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Bill 2012]*

39BB. Offer of shares in foreign lawyer corporation prohibited

- (1) *Any person who offers or invites the public to subscribe for, or purchase, shares in, or debentures of, a foreign lawyer corporation commits an offence and is liable on conviction to a fine at level 5.*

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- (2) *In this section, "debentures" (債權證) has the same meaning as in the Companies Ordinance (Cap. 32). [Ord. No. 94 of 1997]*

39C. Associations

- ~~(1) The Society may register as an Association a Hong Kong firm and one or more foreign firms if the Hong Kong firm and the foreign firm or firms have, or intend to have within 2 months after the registration, an agreement under which fees, profits, premises, management or employees are shared between the Hong Kong firm and the foreign firm or firms.~~

- (1) *The Society may register as an Association a Hong Kong firm or solicitor corporation and one or more foreign firms or foreign lawyer corporations if the Hong Kong firm or solicitor corporation and the foreign firms or foreign lawyer corporations have, or intend to have within 2 months after registration, an agreement under which fees, profits, premises, management or employees are shared between the Hong Kong firm or solicitor corporation and the foreign firms or foreign lawyer corporations. [Ord. No. 94 of 1997]*

- (2) Where the Hong Kong firm and the foreign firm or firms *or solicitor corporation and the foreign firms or foreign lawyer corporations* fail to enter into an agreement referred to in subsection (1) within 2 months after registration of the Association, the Society may cancel the Association's registration. *[Ord. No. 94 of 1997]*

39D. Hong Kong firms may employ foreign lawyers

Subject to rules made under section 73(1)(dc), a Hong Kong firm *or a solicitor corporation* may employ a foreign lawyer. *[Ord. No. 94 of 1997]*

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PART IIIB

SOLICITOR ADVOCATES

39E. Higher Rights Assessment Board

- (1) A board to be known as the Higher Rights Assessment Board is established.
- (2) The Assessment Board –
 - (a) has the functions conferred on it by or under this or any other Ordinance; and
 - (b) has the powers conferred on it by or under this or any other Ordinance, and all other powers necessary to perform its functions.
- (3) The Assessment Board consists of –
 - (a) a chairperson appointed by the Chief Justice, who must be an eligible person;
 - (b) 9 other members appointed by the Chief Justice, of whom –
 - (i) 2 must be eligible persons;
 - (ii) 3 must be solicitors who engage in litigation work in the course of ordinary practice;
 - (iii) 3 must be Senior Counsel; and
 - (iv) one must be a Law Officer or a Principal Government Counsel of the Department of Justice; and
 - (c) one other member selected by the chairperson from among the members of the panel appointed by the Chief Justice under subsection (5).
- (4) Before making an appointment under subsection (3)(b)(ii), (iii) or (iv), the Chief Justice must consult –
 - (a) in the case of an appointment under subsection (3)(b)(ii), the President of the Society;
 - (b) in the case of an appointment under subsection (3)(b)(iii), the Chairman of the Hong Kong Bar Association; or
 - (c) in the case of an appointment under subsection (3)(b)(iv), the Secretary for Justice.
- (5) For the purposes of subsection (3)(c), the Chief Justice may appoint a panel of persons whom the Chief Justice considers suitable for selection as members of the Assessment

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Board and who are not, in the opinion of the Chief Justice, connected in any way with the practice of law.

- (6) A person who is appointed as the chairperson of the Assessment Board under subsection (3)(a) may be paid from the general revenue any remuneration that the Chief Executive considers appropriate, but only if the person is an eligible person under that subsection by reason of being –
- (a) a non-permanent Hong Kong judge of the Court of Final Appeal (other than a non-permanent Hong Kong judge of the Court of Final Appeal who is also a Justice of Appeal of the Court of Appeal); or
 - (b) a person who was formerly a judge of the High Court (other than a recorder or a deputy judge of the Court of First Instance) but who is not a permanent judge or a non-permanent Hong Kong judge of the Court of Final Appeal.
- (7) In this section, “eligible person” (合資格人士) –
- (a) means –
 - (i) a permanent judge or a non-permanent Hong Kong judge of the Court of Final Appeal;
 - (ii) a judge of the High Court (other than a recorder or a deputy judge of the Court of First Instance); or
 - (iii) a person who was formerly a judge of the High Court (other than a recorder or a deputy judge of the Court of First Instance) but who is not a permanent judge or a non-permanent Hong Kong judge of the Court of Final Appeal; and
 - (b) for the purposes of subsection (3)(b)(i), includes a judge of the District Court (other than a deputy judge of the District Court).

39F. Further provisions relating to members of Assessment Board or of panel appointed under section 39E(5)

- (1) A member of the Assessment Board or of the panel appointed under section 39E(5) holds office for a term not exceeding 3 years, but may be reappointed or reselected.
- (2) A member of the Assessment Board or of the panel appointed under section 39E(5) may at any time resign from office by giving notice in writing to the Chief Justice.
- (3) Subject to subsection (4), the Chief Justice may at any time remove from office any member of the Assessment Board or of the panel appointed under section 39E(5) by giving notice in writing to the member.

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- (4) Before removing from office any member of the Assessment Board appointed under section 39E(3)(b)(ii), (iii) or (iv), the Chief Justice must consult –
- (a) in the case of a member appointed under section 39E(3)(b)(ii), the President of the Society;
 - (b) in the case of a member appointed under section 39E(3)(b)(iii), the Chairman of the Hong Kong Bar Association; or
 - (c) in the case of a member appointed under section 39E(3)(b)(iv), the Secretary for Justice.

39G. Further provisions relating to proceedings of Assessment Board

- (1) The quorum for a meeting of the Assessment Board is 7 members, of whom –
- (a) one must be the chairperson of the Board or a member appointed under section 39E(3)(b)(i);
 - (b) one must be a member appointed under section 39E(3)(b)(ii); and
 - (c) one must be a member appointed under section 39E(3)(b)(iii).
- (2) At a meeting of the Assessment Board -
- (a) subject to paragraph (b), the chairperson of the Board must preside; or
 - (b) if the chairperson is not present at the meeting, a member of the Board appointed under section 39E(3)(b)(i) and nominated by the chairperson must preside.
- (3) Each member of the Assessment Board present at a meeting of the Board has one vote.
- (4) A decision on any matter at a meeting of the Assessment Board must be supported -
- (a) in the case of a decision to make any rules under section 73CA, by the votes of at least 6 members of the Board present and voting on that matter; or
 - (b) in any other case, by a majority of votes of the members of the Board present and vote on that matter.
- (5) For the purposes of subsection (4)(b), if on any matter the votes are equally divided, the person presiding at the meeting of the Assessment Board, in addition to having one vote under subsection (3), has a casting vote.
- (6) Subject to the other provisions of this Ordinance, the Assessment Board may regulate its own procedure.

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PART IV*

NOTARIES PUBLIC

40. (Repealed)

40A. Qualifications for appointment

- (1) The Chief Judge may appoint as a notary public in Hong Kong a person whom he considers to be a fit and proper person to be a notary public and who -
 - (a) satisfies the following requirements -
 - (i) his name has been on the roll of solicitors continuously for the whole of the period of 7 years immediately before the date of his application for appointment;
 - (ii) he has practised as a solicitor for a period or periods in aggregate of not less than 7 years;
 - (iii) he has, within the period of 1 year ending on the date of his application for appointment, passed any examination prescribed by the Council of the Society of Notaries under section 73D; and
 - (b) has complied with any requirements prescribed by the Council of the Society of Notaries under section 73D with respect to persons applying for appointment as a notary public.
- (2) The Chief Judge may designate a judge of the Court to exercise the powers conferred on him under subsection (1) to appoint a notary public.
- (3) For the purposes of subsection (1)(a)(i), a person applying for appointment as a notary public who has, at any time within the period of 7 years ending on the date of his application for appointment, been suspended from practice as a solicitor under section 10(2)(b) shall be regarded as not having been on the roll of solicitors during the whole of the period of that suspension.
- (4) The Chief Judge may, upon application being made to him under this subsection, specify in a particular case a period for the purposes of subsection (1)(a)(iii) other than the period specified in that subparagraph.
- (4A) The Chief Judge may designate a judge of the Court to exercise the powers conferred on him under subsection (4) to specify an alternative period for the purposes of subsection (1)(a)(iii) in a particular case.
- (5) The Chief Justice may make rules prescribing the manner of appointment as a notary

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public under this section.

40B. Powers of notaries public

- (1) Every notary public, whether a notary public by virtue of registration under this Part as in force immediately before the commencement* of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) or a notary public appointed under this Part on or after that commencement, has all the powers which immediately before that commencement were exercisable by a notary public under the law of Hong Kong.
- (2) Without affecting the generality of subsection (1), the reference to powers in that subsection includes a reference to -
 - (a) the power to attest, authenticate or certify the due execution of documents;
 - (b) the power to note or protest bills of exchange and to attest, by an act of honour, payment of bills of exchange for honour supra protest;
 - (c) the power to administer oaths, affirmations or declarations.
- (3) Subsection (1) shall not be construed as affecting -
 - (a) any power which is for the time being conferred (either exclusively or inter alia) by or under the law of a country or territory outside Hong Kong on notaries outside the jurisdiction of that country or territory;
 - (b) any power which is for the time being conferred on notaries by the law of nations or which is so conferred by the law of a community, association or group of states established by or formed pursuant to a treaty, convention or other international agreement.
- (4) Where a power described in subsection (3)(a) or (b) is conferred by or under a law so described on notaries of 1 or more specified classes or descriptions, subsection (3) shall be construed and have effect in accordance with that law.
- (5)
 - (a) In subsection (1) "power" (權力) includes functions and duties and that subsection shall be construed and have effect accordingly.
 - (b) The references in subsection (3)(a) to a country shall be construed as including references to part of a country.

40C. Register of notaries public

- (1) The Registrar shall continue to keep a register of notaries public and shall have the custody of the register and of all documents relating to the register and shall allow any person to inspect the register during office hours without payment.

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- (2) The Registrar, upon production of a certificate of appointment signed by the Chief Judge and upon payment to the Registrar and to the Society of Notaries of any fees prescribed by the Chief Justice, shall enter on the register of notaries public the name of the person appointed.
- (3) The Chief Judge may, if he thinks fit, at any time order the Registrar to replace on the register of notaries public the name of a notary public whose name has been removed from or struck off the register of notaries public.

40D. Qualifications for practising as notary public

- (1) No person shall be qualified to practise as a notary public unless -
 - (a) his name is for the time being on the register of notaries public;
 - (b) his name is for the time being on the roll of solicitors;
 - (c) he is not suspended from practising as a notary public or as a solicitor;
 - (d) except as provided in subsection (2), he is a person who holds a current practising certificate as a notary public; and
 - (e) he is complying with any indemnity rules made by the Council of the Society of Notaries under section 73E or is exempt from complying with them.
- (2) The requirement imposed by subsection (1)(d) does not apply in the case of a person who holds a current practising certificate as a solicitor issued by the Law Society and a current certificate of membership issued by the Society of Notaries.

40E. Practising certificate-notaries public

- (1) On application in writing by a notary public in the month of November in any year, but subject to subsections (2) to (6), the Society of Notaries shall issue to the applicant a practising certificate as a notary public for the period of one calendar year from 1 January next following the date of the application.
- (2) Any application under subsection (1) shall be in a form approved by the Council of the Society of Notaries and shall be accompanied by payment of any fee prescribed by the Council for the issue of a practising certificate.
- (3) A practising certificate issued under subsection (1) shall be in a form prescribed by the Council of the Society of Notaries.
- (4) A practising certificate shall not be issued under subsection (1) unless the applicant has, where necessary, complied with any indemnity rules made by the Council of the Society of Notaries under section 73E or is exempt from them and has paid to the Society of Notaries the membership subscription in respect of the year for which the practising

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certificate is to be issued.

- (5) Despite subsection (1), the Society of Notaries may, upon such conditions as it thinks fit, permit an application for a practising certificate to be made under this subsection at any time and upon such application may issue to the applicant a practising certificate for any period not exceeding one calendar year and ending on 31 December in the year in which it is issued.
- (6) Despite subsection (1), the Society of Notaries may -
 - (a) refuse to issue a practising certificate on grounds prescribed by the Council of the Society of Notaries;
 - (b) issue a practising certificate to an applicant subject to conditions prescribed by the Council of the Society of Notaries;
 - (c) amend an already issued certificate by adding conditions prescribed by the Council of the Society of Notaries.
- (7) Where the Society of Notaries considers that a notary public has not complied with conditions imposed under subsection (6) it may, after affording the notary public the opportunity to make representations, suspend or cancel the notary public's practising certificate with or without refunding any fee paid in respect of the practising certificate.
- (8) Where the name of a notary public is removed from or struck off the register of notaries public or where a notary public becomes bankrupt, the practising certificate of that notary public shall automatically determine and in any such case no part of the fee paid in respect of the practising certificate shall be repayable.
- (9) The publication in the Gazette by the Society of Notaries of notice containing a list of the names and addresses of those notaries public who have obtained practising certificates for the period stated in the notice shall, until the contrary is proved, be evidence that each person whose name appears in the list is a person qualified under section 40D to act as a notary public and to whom a practising certificate for the period stated in the notice has been issued under this section; and the absence from any such list of the name of any person shall, until the contrary is proved, be evidence that such person is not so qualified.
- (10) Where the Society of Notaries, in the exercise of the powers conferred on it under subsection (6) or (7), refuses to issue a practising certificate, issues a certificate subject to conditions, amends a certificate by adding conditions or suspends or cancels a certificate, the notary public may appeal to the Chief Judge against the decision of the Society of Notaries within 1 month of being notified of it.
- (11) On an appeal to the Chief Judge under subsection (10), he may -
 - (a) affirm the decision of the Society of Notaries;
 - (b) direct the Society of Notaries to -

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- (i) issue a practising certificate to the applicant free from conditions or, if any conditions have been prescribed for the purposes of subsection (6)(b), subject to such of those conditions as he thinks fit;
 - (ii) remove any conditions added to a practising certificate under subsection (6)(c); or
 - (iii) revoke any suspension or cancellation of a practising certificate effected under subsection (7); or
- (c) remit the matter to the Society of Notaries for reconsideration with such directions as he thinks fit.
- (12) Where the Chief Judge affirms a decision of the Society of Notaries under paragraph (a) of subsection (11) or gives a direction to the Society of Notaries under paragraph (b) of that subsection, the decision of the Chief Judge shall be final.

40F. Discipline of notaries public

- (1) A notary public shall be liable to be disciplined under this Part if -
- (a) he has engaged in fraudulent conduct in pursuit of his notarial work;
 - (b) he has engaged in conduct, whether in pursuit of his notarial work or otherwise, which is prejudicial to the administration of justice, or which is dishonest or otherwise discreditable to a notary public, or which is likely to bring the profession of notary public into disrepute;
 - (c) not being exempt from the requirement to comply with a rule made by the Society of Notaries under section 73E, he has failed to comply with that rule; or
 - (d) he has become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).
- (2) A notary public who is so incapacitated by physical or mental illness as to be unable to carry out notarial work shall be liable to be dealt with under this Part in the same manner as if he was liable to be disciplined under this Part, and for the purposes of any proceedings under this Part in relation to such a person references in this Part to the person's conduct shall be read as references to his state of physical or mental health.

40G. Notaries Public Disciplinary Tribunal Panel

- (1) The Chief Justice shall appoint a Notaries Public Disciplinary Tribunal consisting of -
- (a) no fewer than 10 and no more than 20 practising notaries public of at least 5 years' standing; and

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- (b) no fewer than 5 and no more than 10 lay persons who are not, in the opinion of the Chief Justice, connected in any way with practice as a notary public or the practice of law.
- (2) A member of the Council of the Society of Notaries is not eligible to be appointed to or remain on the Panel.
- (3) A person appointed to the Panel shall be appointed for a term specified by the Chief Justice not to exceed 5 years but may be reappointed for a further term or terms.
- (4) The Chief Justice shall appoint one of the notaries public on the Panel as the Tribunal Convenor for a 3 year term and he may appoint one or more of the other notaries public on the Panel as a Deputy Tribunal Convenor for a 3 year term.
- (5) A Deputy Tribunal Convenor designated by the Tribunal Convenor or the Chief Justice may act in place of the Tribunal Convenor whenever the Tribunal Convenor is prevented from exercising the Tribunal Convenor's functions under this Ordinance because of illness, absence from Hong Kong or any other cause, or if there is or is likely to be any conflict of interest on the part of the Tribunal Convenor.

40H. Complaint about conduct of notaries public

- (1) Where the Council of the Society of Notaries considers as a result of a complaint being made to it or otherwise that a person who is, or was at the relevant time, a notary public may be liable to be disciplined under this Part it shall submit the matter to the Tribunal Convenor for the purpose of constituting a Notaries Public Disciplinary Tribunal to inquire into the conduct of the person.
- (2) Where a complaint is made to the Council of the Society of Notaries and the Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so.
- (3) A matter submitted to the Tribunal Convenor shall include or be accompanied by particulars of the conduct that is to be inquired into and by particulars of any associated allegations of misconduct.

40I. Notaries Public Disciplinary Tribunal

- (1) On receiving a submission under section 40H, the Tribunal Convenor shall appoint from the Panel 2 notaries public and one lay person.
- (2) The persons so appointed constitute a Notaries Public Disciplinary Tribunal to inquire into the conduct of the notary public concerned.

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- (3) When constituting a Notaries Public Disciplinary Tribunal, the Tribunal Convenor shall also appoint one of its members as chairman of the Tribunal.
- (4) A Notaries Public Disciplinary Tribunal may be constituted by the chairman and by one other member designated by the chairman for the purposes only of -
 - (a) giving directions or making orders for the conduct of any inquiry being held under section 40J;
 - (b) announcing the findings of the Tribunal with respect to the inquiry.
- (5) A member of the Tribunal who becomes a member of the Council of the Society of Notaries ceases to be a member of the Tribunal.
- (6) A Notaries Public Disciplinary Tribunal shall sit at such places and at such times as the chairman of the Tribunal directs.
- (7) A Notaries Public Disciplinary Tribunal shall hold its proceedings in camera, except when the notary public whose conduct is being inquired into requests that the proceedings be open to the public.

40J. Powers of a Notaries Public Disciplinary Tribunal

- (1) A Notaries Public Disciplinary Tribunal shall have power to inquire into the conduct of any person in respect of which it was constituted.
- (2) On completion of its inquiry, a Notaries Public Disciplinary Tribunal shall have power to make such order as it thinks fit and any such order may, in particular, include provision for all or any of the following matters -
 - (a) striking off the register of notaries public the name of the notary public to whom the inquiry relates;
 - (b) suspending that notary public from practice for such period as the Notaries Public Disciplinary Tribunal thinks fit;
 - (c) permitting the notary public to continue practice, but subject to conditions which may be imposed for up to 3 years;
 - (d) payment by that notary public to the complainant of an amount not exceeding the amount paid or payable to the notary public in relation to the complainant's matters in dispute;
 - (e) payment by that notary public to a fund established under rules prescribed under section 73E of an amount not greater than an amount paid out of the fund in respect of that notary public;

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- (f) payment by that notary public of a penalty not exceeding \$500,000 which shall be paid into the general revenue;
 - (g) censure of that notary public;
 - (h) payment by any party of the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or payment of any amount that the Tribunal considers is a reasonable contribution towards those costs.
- (3) Every order made under subsection (2) shall be filed with the Secretary of the Society of Notaries and shall be available for inspection by any person affected during such hours as the Council of the Society of Notaries may prescribe, and a signed copy of every order shall be filed with the Secretary General of the Law Society within 14 days of its being made.
- (4) An order that may be made under subsection (2) may also be made in respect of a person who was, at the relevant time, a notary public.

40K. Ancillary powers of a Notaries Public Disciplinary Tribunal

- (1) For the purpose of conducting any inquiry under section 40J, a Notaries Public Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters -
- (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
 - (b) compelling the production of documents;
 - (c) punishing persons guilty of contempt;
 - (d) ordering an inspection of any property;
 - (e) conducting the examination of witnesses; and
 - (f) adjourning any meeting from time to time and from one place to another,

and a summons under the hand of the chairman of a Tribunal may be substituted for and shall be equivalent to any form of process capable of being issued in any action or suit for compelling the attendance of witnesses or the production of documents and any warrant of committal to prison issued for the purpose of enforcing any such powers shall be signed by the chairman of the Tribunal but shall not authorize the imprisonment of any offender for a period exceeding 1 month.

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- (2) The Commissioner of Police and all police officers, the Commissioner for Correctional Services and all officers of the Correctional Services Department and all officers and bailiffs of the court are required to give their utmost assistance to every Notaries Public Disciplinary Tribunal and to every chairman of such Tribunal in the enforcement of the exercise of any power vested in the Tribunal or chairman, whether conferred by subsection (1) or otherwise.
- (3) Every member of a Notaries Public Disciplinary Tribunal shall have the like protection and privileges, in relation to any action or suit brought against him for any act done or omitted to be done in the execution of his duties as such member, as is given by any law to a magistrate acting in the execution of his office.
- (4) All proceedings of a Notaries Public Disciplinary Tribunal shall be privileged.
- (5) A Notaries Public Disciplinary Tribunal constituted to inquire into the conduct of a person may inquire into other conduct of the person, but only if -
 - (a) the person has been given reasonable notice and adequate particulars of that other conduct; and
 - (b) the Tribunal is satisfied that that other conduct is related to the first-mentioned conduct.
- (6) The power conferred by subsection (5) is exercisable only on the application of -
 - (a) the Council of the Society of Notaries in the case of a matter submitted to the Tribunal Convenor under section 40H(1); or
 - (b) the Chief Judge in the case of a matter submitted to the Tribunal Convenor under section 40H(2).
- (7) Notice is not reasonable for the purpose of subsection (5) if it is less than 7 days.

40L. Findings of a Notaries Public Disciplinary Tribunal

- (1) An order made by a Notaries Public Disciplinary Tribunal under section 40J(2) shall include a statement of its findings in relation to the facts of the case and shall be signed by the chairman of the Tribunal or by a member authorized by the Tribunal.
- (2) A signed copy of an order of a Tribunal in relation to a notary public shall be filed with the Registrar who shall enter a note of the order on the register of notaries public in connection with the name of the notary public and, where the order so directs, the Registrar shall strike off the name and shall publish an order for suspension or striking off in the Gazette within 14 days after a copy of the order is so filed.
- (3) The Tribunal that heard the matter or a Tribunal constituted for the purpose by the Tribunal Convenor may, on the application of a party against whom an order for payment is made under section 40J(2), order that payment may be paid by instalments or

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be deferred for a period the Tribunal considers appropriate.

- (4) An application for an order for payment by instalments, or for the deferring of payment, may be made at the hearing or, within 14 days after the date of the order for payment, by notice in writing to the Tribunal Convenor and to all parties who were represented at the Tribunal hearing.
- (5) On receipt of a notice under subsection (4), the Tribunal Convenor shall, within 14 days, notify the applicant and the other parties of a date on which the application will be heard by a Tribunal.
- (6) Payment of an amount ordered to be paid by the Tribunal may be enforced as if it were an order issued out of the Court on the production of a copy of the order signed by the chairman of the Tribunal or other authorized member of the Tribunal and the rules of the Court, so far as applicable, apply to the order.
- (7) No order under subsection (6) shall be enforced until after the 14 days referred to in subsection (4) have elapsed or until after the Tribunal has made its decision under subsection (3).

40M. Appeal and saving

- (1) Subject to subsection (2), an appeal shall lie to the Court of Appeal against any order made by a Notaries Public Disciplinary Tribunal and the provisions of Order 59 of the Rules of the High Court (Cap. 4 sub. leg. A) shall apply to every such appeal save that the time for serving notice of motion of appeal shall be 21 days from the date of the decision and not 28 days as provided in that Order and the decision of the Court of Appeal on any such appeal shall be final. ***[Statute Law (Miscellaneous Provisions) Ordinance 2012]***
- (2) Subsection (1) does not apply in relation to any decision of the Tribunal on an application under section 40L(4).
- (3) In any appeal under subsection (1) the Society of Notaries shall be the respondent.
- (4) The hearing of every appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal may otherwise direct.

40N. Winding-up, etc. of business of notaries public struck off or suspended

- (1) The Court may make an order for the winding-up of the business of any notary public who is struck off the register of notaries public in such terms and appointing such solicitor ~~or firm of solicitors~~, ***firm of solicitors or solicitor corporation*** with notarial practice or the Official Receiver under the Bankruptcy Ordinance (Cap. 6) or both as it thinks fit for that purpose. ***[Statute Law (Miscellaneous Provisions) Bill 2012]***
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- (2) The Court may make an order appointing any solicitor ~~or firm of solicitors~~, firm of solicitors or solicitor corporation with notarial practice or the Official Receiver or both to manage the business of any notary public whose practising certificate is suspended, for the duration of the suspension. *[Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*

40O. Removal from register at request of notary public

- (1) Upon reasonable cause being shown to the Council of the Society of Notaries by a notary public, the Council may direct the Registrar to remove the name of such notary public from the register of notaries public and the Registrar shall remove such name from the register of notaries public.
- (2) With effect from the date of removal of a name under this section, the person whose name is so removed shall cease to be a notary public.

40P. Automatic striking-off or suspension of notary public

- (1) Where the name of a solicitor who is also a notary public is struck off the roll of solicitors by the Registrar under section 12(2) pursuant to an order made by the Solicitors Disciplinary Tribunal under section 10(2)(a), the Registrar shall as soon as practicable after that strike off the register of notaries public the name of that person and shall publish a notice of this fact in the Gazette within 14 days after the striking off the register of notaries public.
- (2) (a) Where a solicitor who is also a notary public is suspended from practice as a solicitor for a period by order of a Solicitors Disciplinary Tribunal under section 10(2)(b), the notary public shall be deemed to be suspended from practice as a notary public for the same period.
- (b) Where in relation to such a solicitor who is also a notary public a signed copy of the order of the Solicitors Disciplinary Tribunal is filed with the Registrar under section 12(2), the Registrar shall as soon as practicable after entering a note of the order on the roll of solicitors, enter a note on the register of notaries public of the period of suspension having effect by virtue of paragraph (a); and where the Registrar is directed by the order made by the Solicitors Disciplinary Tribunal to publish the order for suspension of the solicitor in the Gazette he shall also publish in the Gazette a notice of the suspension having effect by virtue of paragraph (a).
- (3) (a) ~~If in relation to a solicitor who is also a notary public and whose name has been struck off the roll of solicitors as provided in subsection (1), an order is made by the Court of Appeal in proceedings under section 13 that the solicitor's name be restored to the roll of solicitors by the Registrar then, subject to any order made in respect of the notary public under section 40J(2), the Registrar shall as soon as is practicable after that restore the name of the notary public to the register of~~

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~~notaries public under section 12(2), the striking off of the name of the solicitor from the roll of solicitors is set aside in the final determination of any appeal under section 13, then, subject to any order made in respect of the notary public under section 40J(2), the Registrar must, as soon as is practicable after that determination, restore the name of the notary public to the register of notaries public.~~ **[Statute Law (Miscellaneous Provisions) Ordinance 2012]**

- (b) If in relation to a solicitor who is also a notary public and who has been suspended from practice as a solicitor as provided in subsection (2), an order is made by the Court of Appeal in proceedings under section 13 that the suspension be set aside ~~under section 10(2)(b), the solicitor's suspension from practice as a solicitor is set aside in the final determination of any appeal under section 13,~~ any suspension of that person from practice as a notary public having effect by virtue of subsection (2)(a) shall cease to have effect, and the Registrar shall enter an appropriate note on the register of notaries public accordingly. **[Statute Law (Miscellaneous Provisions) Ordinance 2012]**

40Q. Society of Notaries' general right of audience

The Society of Notaries shall have a general right of audience by any of its members appointed by it for that purpose, or by any solicitor or counsel, before -

- (a) a Notaries Public Disciplinary Tribunal; and
- (b) the Court on the hearing of any matter under this Ordinance that affects notaries public,

and in any such case, whether the Society of Notaries has or is seeking audience or not, it shall be served with a copy of every necessary document filed with the Registrar.

40R. Expenses of Notaries Public Disciplinary Tribunal and of Society of Notaries

- (1) The expenses incurred by -
- (a) a Notaries Public Disciplinary Tribunal; and
- (b) the Society of Notaries, in connection with proceedings before a Notaries Public Disciplinary Tribunal and any appeal under section 40M, ~~the Court of Appeal and the Court of Final Appeal,~~ **[Statute Law (Miscellaneous Provisions) Ordinance 2012]**

may be paid to the Society of Notaries out of general revenue upon a certificate issued by the Secretary for Justice.

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- (2) The Secretary for Justice shall only issue a certificate under subsection (1) if he is satisfied that –
- (a) the expenses were necessarily incurred by the Notaries Public Disciplinary Tribunal or the Society of Notaries, as the case may be, in exercise of the powers or duties conferred or imposed by this Ordinance;
 - (b) the amount of such expenses is reasonable; and
 - (c) the expenses could not reasonably be recovered from the person whose conduct is the subject of the proceedings before the Notaries Public Disciplinary Tribunal ~~or the Court of Appeal~~, the Court of Appeal or the Court of Final Appeal, as the case may be. [*Statute Law (Miscellaneous Provisions) Ordinance 2012*]
- (3) In this section, "expenses" (開支) includes witnesses' expenses and fees, counsel's fees, solicitor's fees, auditor's fees and other charges and disbursements.

40S. Statutory provisions to prevail over Society of Notaries' articles

In the case of any inconsistency between the provisions of this Ordinance and the Memorandum and Articles of Association of the Society of Notaries, the provisions of this Ordinance shall prevail.

40T. Transitional arrangements

- (1) In this section, "amendment Ordinance" means the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998).
- (2) Unless the context otherwise requires, reference in this or any other Ordinance –
- (a) to a notary public includes reference to a person who is a notary public by virtue of registration under this Part as in force immediately before the commencement* of the amendment Ordinance;
 - (b) to the register of notaries public includes reference to the register kept under this Part as in force immediately before the commencement* of the amendment Ordinance;
 - (c) to any order made under this Part includes reference to an order made under this Part as in force immediately before the commencement* of the amendment Ordinance.

*Commencement date: 30 June 2005

41. (Repealed)

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42. (Repealed)

43. (Repealed)

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PART V

**PRIVILEGES, RESTRICTIONS AND OFFENCES
IN CONNECTION WITH PRACTICE**

44. Penalty for unlawfully practising as a barrister or notary public

- (1) Any person who -
- (a) not being a qualified barrister, either directly or indirectly, practises or acts as a barrister;
 - (b) not being a qualified notary public, either directly or indirectly, practises or acts as a notary public,
- shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (2) Nothing in this section shall be construed as affecting any provision of the Consular Relations Ordinance (Cap. 259).

45. Unqualified person not to act as solicitor or solicitor corporation [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

- (1) ~~A person who, by virtue of section 7, is not qualified to act as a solicitor shall not act as a solicitor, or as such sue out any writ or process, or commence, carry on or defend any action, suit or other proceeding, in the name of any other person or in his own name, in any court of civil or criminal jurisdiction or act as a solicitor in any cause or matter, civil or criminal, to be heard or determined before any court or magistrate.~~

(1) *An unqualified person must not —*

- (a) *act as a solicitor or solicitor corporation in a court of civil or criminal jurisdiction; or***
- (b) *as such, issue any writ or process, or commence, prosecute or defend any action, suit or other proceedings in such a court (either in the person's own name or in the name of any other person); or***
- (c) *act as a solicitor or solicitor corporation in any cause or matter (whether civil or criminal to be heard or determined by a court, magistrate or justice. [Ord. No. 94 of 1997]***

- (2) Any person who contravenes the provisions of this section shall-

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- (a) be guilty of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly;
 - (b) be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting; and
 - (c) be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000 and to imprisonment for 2 years.
 - (d) (Repealed)
- (3) (Repealed)

45A. Person not having higher rights of audience in respect of certain class of proceedings not to exercise those rights as solicitor

If a person who does not have higher rights of audience in respect of a class of proceedings under Part IIIB purports to exercise those rights in respect of proceedings of that class as a solicitor –

- (a) the person is guilty of contempt of the court before which the person purports to exercise those rights as a solicitor;
- (b) any costs in respect of anything done by the person in purported exercise of those rights as a solicitor are not recoverable by any person; and
- (c) the person commits an offence and is liable on conviction to a fine of \$500,000.

~~46. Penalty for pretending to be a solicitor, etc.~~

~~(1) Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or recognized by law as qualified to act as, a solicitor shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.~~

~~(2) Any person who –~~

- ~~(a) not being an employee of a solicitor, a barrister or a foreign lawyer, wilfully pretends to be, or takes or uses any title, addition or description implying that he is, such an employee;~~
- ~~(b) without the authority of a solicitor, a barrister, a foreign lawyer or a trainee solicitor, purports to act with such authority;~~

~~shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.~~

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46. Offence to pretend to be solicitor or solicitor corporation

(1) An unqualified person who —

(a) pretends to be a solicitor or solicitor corporation; or

(b) uses a name, title or description that implies that the person is qualified, or recognized by law as qualified, to act as a solicitor or solicitor corporation, commits an offence.

(2) A person who —

(a) pretends to be an employee of a barrister or legal practice entity; or

(b) uses a title or description that implies that the person is such an employee when the person is not; or

(c) purports to act with the authority of a barrister or legal practice entity when no such authority has been conferred,

commits an offence.

(3) A person who is convicted of an offence against this section is liable to a fine of \$500,000. [Ord. No. 94 of 1997]

47. Unqualified person not to prepare certain instruments, etc.

(1) Any unqualified person, not being a barrister or a notary public, who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly -

(a) draws or prepares any instrument relating to movable or immovable property or to any legal proceeding; or

(b) draws or prepares any memorial or other document for the purposes of the Land Registration Ordinance (Cap. 128) or the New Territories Ordinance (Cap. 97) or makes any application or lodges any testimony for registration under either of those Ordinances at the Land Registry,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.

(2) This section shall not extend to -

(a) any public officer drawing or preparing instruments in the course of his duty;

(b) any person employed merely to engross or copy any instrument or proceeding;

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or

- (c) an unqualified person who, while acting in the course of bona fide employment and supervised by a qualified person, draws or prepares any instrument, memorial or other document in the name of the qualified person.
- (3) For the purposes of this section, "instrument" (文書) does not include-
- (a) a will or other testamentary instrument; or
 - (b) an agreement under hand only; or
 - (c) a letter of power of attorney; or
 - (d) a transfer of stock containing no trust or limitation thereof.

48. Unqualified person not to act in preparation of papers for probate, etc.

- (1) Any unqualified person, not being a barrister or a notary public, who, either directly or as an agent of any person, whether or not that other person is a solicitor, **solicitor corporation**, barrister or notary public, takes instructions for or draws or prepares any paper on which to found or oppose a grant of probate or of letters of administration shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence and, without prejudice to any other liability or disability to which he may be subject under this Ordinance or any other enactment, shall be liable on summary conviction to a fine of \$500,000: **[Ord. No. 94 of 1997]**
- (2) This section does not apply to -
 - (a) a public officer who in the course of his duty draws or prepares papers referred to in subsection (1); or
 - (b) an unqualified person who, while acting in the course of bona fide employment and supervised by a qualified person, draws or prepares papers referred to in subsection (1) in the name of the qualified person.

49. Solicitor not to act as agent for unqualified person

- (1) No solicitor shall wilfully and knowingly -
 - (a) act as agent in any action or in any matter in bankruptcy for any unqualified person; or
 - (b) permit his name to be made use of in any such action or matter upon the account or for the profit of any unqualified person; or

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- (c) (Repealed)
- (d) do any other act enabling any unqualified person to appear, act or practise in any respect as a solicitor in any such action or matter.
- (2) Where it appears to a Solicitors Disciplinary Tribunal or to the Court that a solicitor has acted in contravention of this section, the Solicitors Disciplinary Tribunal or the Court shall order his name to be struck off the roll of solicitors.
- (3) Where the Court orders the name of a solicitor to be struck off the roll in respect of an offence under this section, it may further order that the unqualified person who was enabled by the conduct of the offender to act or practise as a solicitor shall be imprisoned for any period not exceeding 1 year.

50. ~~No costs for unqualified person~~

~~No costs in respect of anything done by an unqualified person acting as a solicitor shall be recoverable in any action, suit or matter by any person whomsoever.~~

50. *Costs not recoverable for work done by unqualified person*

A person cannot in any legal proceedings recover costs for anything done by an unqualified person who acts as a solicitor or solicitor corporation. [Ord. No. 94 of 1997]

50A. Recovery of moneys in certain cases

- (1) Nothing in section 45(2)(b) ***[Ord. No. 94 of 1997]*** or in section 50 prevents the recovery of moneys paid or to be paid by a solicitor on behalf of a client in respect of anything done by the solicitor while acting for the client without holding a practising certificate in force, those moneys would have been recoverable had the solicitor held such a certificate in force when so acting.
- (2) Nothing in section 45A(b) prevents the recovery of moneys paid or to be paid by a solicitor on behalf of a client in respect of anything done by the solicitor in purported exercise of any higher rights of audience as a solicitor while not having those rights under Part IIIB, if those moneys would have been recoverable had the solicitor had those rights under that Part.

50B. Offences in relation to foreign lawyers, foreign firms and Associations

- (1) A person who offers his services to the public as a practitioner of foreign law commits an offence unless he is a solicitor who satisfies all the requirements set forth in section 7, **a barrister or a foreign lawyer a solicitor corporation, a barrister, a foreign lawyer or a foreign lawyer corporation. [Statute Law (Miscellaneous Provisions)]**

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Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

- (2) A person who is qualified to practise foreign law and who –
- (a) from within a foreign firm **or foreign lawyer corporation** but not as a foreign lawyer, or **[Ord. No. 94 of 1997]**
 - (b) from within a Hong Kong firm **or solicitor corporation** but not as a solicitor or foreign lawyer, **[Ord. No. 94 of 1997]**

offers his services to the public as a practitioner of foreign law, does not commit an offence under subsection (1) so long as he does not so offer his services in any 12 month period for more than 3 continuous months or more than 90 days.

- (3) A foreign lawyer who offers his services to the public as a practitioner in a capacity other than as a practitioner in a foreign firm or a Hong Kong firm **Hong Kong firm, solicitor corporation, foreign firm or foreign lawyer corporation** commits an offence. **[Ord. No. 94 of 1997]**
- (4) A foreign lawyer or foreign firm shall not take a solicitor into partnership or employ a solicitor who holds a practising certificate or a barrister who holds a practising certificate. **must not –**

(a) employ or take into partnership a solicitor who holds a practising certificate; or

(b) employ or take into partnership a barrister who holds a practising certificate. [Statute Law (Miscellaneous Provisions) Ordinance 2012]

(4A) A foreign lawyer corporation must not have as a member, or employ, a barrister or solicitor who holds a practising certificate. [Ord. No. 94 of 1997]

- (5) Where a Hong Kong firm and a foreign firm have an agreement as described in section 39C(1) and they are not registered as an Association, the partners or the sole practitioners of each firm commit an offence.

(5) If –

(a) a Hong Kong firm or a solicitor corporation and a foreign firm or foreign lawyer corporation have entered into an agreement of the kind referred to in section 39C(1); and

(b) the entity established by the agreement is not registered as an Association,

any partner or sole practitioner of the firm, or officer of the corporation, who knowingly participated in the making of the agreement commits an offence. [Ord. No. 94 of 1997]

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- (6) A person who commits an offence under this section is liable to a fine of \$500,000.

51. Application of penal provisions to body corporate

- (1) If any act is done by a body corporate, or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified or recognized by law as qualified to act as a solicitor, the body corporate shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000, and, in the case of an act done by a director, officer or servant of the body corporate, such person shall also be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.
- (2) For the avoidance of doubt, it is hereby declared that in sections 45, 46, 47, 48, 49, 50 and 50B, references to unqualified persons and to persons include references to a body corporate.

51. Certain bodies corporate prohibited from practising as solicitors

- (1) A body corporate that is not a solicitor corporation commits an offence if the body, or any officer or employee of the body, does anything that implies that the body is qualified, or is recognized by law as being qualified, to act as a solicitor or to conduct business of a solicitor.
- (2) An officer or employee of a body corporate who knowingly participates in anything referred to in subsection (1) in relation to the body also commits an offence.
- (3) A person who is convicted of an offence against this section is liable to a fine of \$500,000.

51A. Offences by officers of bodies corporate

- (1) If an offence against this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance or to be attributable to any neglect on the part of, an officer of the body or by a person who was purporting to act as such an officer, the officer or person also commits the offence and is liable to be proceeded against and punished accordingly.
- (2) An officer or person may be proceeded against and punished under subsection (1) whether or not the body corporate has been proceeded against and punished for the offence.
- (3) This section is subject to any other provision of this Ordinance that expressly provides for offences by bodies corporate. [Ord. No.94 of 1997]

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52. Solicitors not to commence or defend actions while in prison

- (1) No solicitor whilst a prisoner in any prison shall as a solicitor, in his own name or in the name of any other solicitor, sue out any writ or process, or commence, prosecute or defend any action or any matter in bankruptcy.
- (2) Any solicitor commencing, prosecuting or defending any such action or matter in contravention of this section shall be incapable of maintaining any action for the recovery of any costs in respect of any business done by him whilst so confined as aforesaid, and he and any solicitor permitting him to commence, prosecute or defend any such action or matter in his name shall be guilty of contempt of the court in which such action or matter was commenced or prosecuted and may be punished accordingly.

53. Employment by ~~solicitor or foreign lawyer~~ *legal practice entity* of persons struck off or suspended [Ord. No. 94 of 1997]

- (1) No solicitor shall, in connection with his practice as a solicitor, without the written permission of the Society ~~which may be given for such period and subject to such conditions as the Society thinks fit, [Ord. No. 94 of 1997]~~ employ or remunerate any person who, to his knowledge, -
 - (a) is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll of solicitors or is suspended from practising as a solicitor or is an undischarged bankrupt;
 - (b) was a foreign lawyer whose registration was cancelled other than under section 19 and who has not been re-registered or is a foreign lawyer whose registration is suspended; or
 - (c) is a person referred to in section 39A(1) who -
 - (i) has not been registered as a foreign lawyer under that section; and
 - (ii) is an undischarged bankrupt.

(1AA) A solicitor corporation must not, without the written permission of the Society, have as a member of the corporation, or employ, a person -

(a) who is disqualified from practising as a solicitor because the person's name has been struck off the roll of solicitors, or the person who is suspended from practising as a solicitor, or who is an undischarged bankrupt; [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

(b) whose practising certificate has been determined by the operation of section 6(7) because a receiving order in bankruptcy is in force in respect of the person; or

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~~(e)(b) who was a foreign lawyer whose registration was cancelled otherwise than under section 19 and who has not since been re-registered, or who is a foreign lawyer whose registration is suspended; or [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]~~

~~(c) who is a person referred to in section 39A(1) who —~~

~~(i) has not been registered as a foreign lawyer under that section; and~~

~~(ii) is an undischarged bankrupt. [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]~~

(1A) No foreign lawyer shall, in connection with his practice as a foreign lawyer, without the written permission of the Society which may be given for such period and subject to such conditions as the Society thinks fit, [Ord. No. 94 of 1997] employ or remunerate any person who, to his knowledge, was a foreign lawyer whose registration was cancelled other than under section 19 and who has not been re-registered or is a foreign lawyer whose registration is suspended.

~~(1B) A foreign lawyer corporation must not, without the written permission of the Society, have as a member of the corporation, or employ, a person —~~

~~(a) who was a foreign lawyer whose registration was cancelled otherwise than under section 19 and who has not since been re-registered; or~~

~~(b) who is a foreign lawyer whose registration is suspended. [Ord. No. 94 of 1997]~~

~~(2) No solicitor or foreign lawyer shall in connection with his practice as a solicitor or foreign lawyer employ or remunerate any person who, to his knowledge, is the subject of an order made by a Solicitors Disciplinary Tribunal under section 10(2)(g) whereby the employment of such person by any solicitor or foreign lawyer is prohibited, while such order is in force.~~

~~(2) A solicitor or foreign lawyer must not, in connection with the legal practice of the solicitor or lawyer, employ or remunerate a person who is, to the knowledge of the solicitor or lawyer, the subject of an order made by a Solicitors Disciplinary Tribunal whereby the employment of the person by a legal practice entity is prohibited while the order is in force. [Ord. No. 94 of 1997]~~

~~(2A) A solicitor corporation or foreign lawyer corporation must not, without the written permission of the Society, employ or remunerate a person who is, to the knowledge of any officer of the corporation, the subject of an order made by a Solicitors Disciplinary Tribunal whereby the employment of the person by a legal practice entity is prohibited while the order is in force. [Ord. No. 94 of 1997]~~

~~(3) No solicitor or foreign lawyer shall, in connection with his practice as a solicitor or~~

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foreign lawyer, without written permission of the Society, which may be given for such period and subject to such conditions as the Society may think fit, employ or remunerate any person, who, to his knowledge, has been convicted of a criminal offence involving dishonesty.

(3) A solicitor or foreign lawyer must not, without the written permission of the Society, employ or remunerate a person who, to the knowledge of the solicitor or lawyer, has been convicted of a criminal offence involving dishonesty. [Ord. No. 94 of 1997]

(3A) A solicitor corporation or foreign lawyer corporation must not, without the written permission of the Society, employ or remunerate a person who, to the knowledge of any officer of the corporation, has been convicted of a criminal offence involving dishonesty.

(3B) The written permission of the Society under this section may be given for such period and subject to such conditions as the Society thinks fit. [Ord. No. 94 of 1997]

(4) A solicitor or foreign lawyer **person** aggrieved by the refusal of the Society to grant any such permission as aforesaid, or by any conditions attached by the Society to the grant thereof, may appeal to the Chief Judge, in such manner as may be prescribed by the Chief Justice, and on any such appeal the Chief Judge may confirm the refusal or the conditions, as the case may be, or may, in lieu of the Society, grant such permission for such period and subject to such conditions as he thinks fit. **[Ord. No. 94 of 1997]**

(5) If any solicitor acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given thereunder, his name shall be struck off the roll or he shall be suspended from practice for such period as a Solicitors Disciplinary Tribunal may think fit.

(5AA) A Solicitors Disciplinary Tribunal can -

(a) cancel the approval of a solicitor corporation under section 7C; or

(b) suspend that approval for such period as the Tribunal thinks fit,

if the corporation contravenes this section, or any condition subject to which the Society has granted permission under this section. [Ord. No. 94 of 1997]

~~(5A) If a foreign lawyer acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given, his registration as a foreign lawyer shall be cancelled or shall be suspended for such period as a Solicitors Disciplinary Tribunal may think fit.~~

(5A) A Solicitors Disciplinary Tribunal can -

(a) cancel the registration of a foreign lawyer or a foreign lawyer corporation under Part IIIA; or

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(b) suspend that registration for such period as the Tribunal thinks fit,

if the lawyer or corporation contravenes this section, or any condition subject to which the Society has granted permission under this section. [Ord. No. 94 of 1997]

~~(6) — Any person who, while there is in force in respect of him an order made under section 10(2)(g) prohibiting his employment by any solicitor or foreign lawyer, seeks or accepts any employment by or remuneration from a solicitor or foreign lawyer in connection with his practice as a solicitor or foreign lawyer without previously informing the solicitor or foreign lawyer of that order shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.~~

(6) A person who, while subject to an order made under section 10(2)(h) or (2B)(g) prohibiting the person from being employed by a legal practice entity, seeks or accepts employment by, or remuneration from, such an entity without having previously informed the entity of the order commits an offence and is liable on conviction to a fine of \$500,000. [Ord. No. 94 of 1997]

54. Penalty on failure to disclose fact of having been struck off, etc.

~~(1) — Any person who, whilst he is disqualified from practising as a solicitor by reason of the fact that he has been struck off the roll or is suspended from practising as a solicitor, seeks or accepts employment by a solicitor in connection with that solicitor's practice without previously informing him that he is so disqualified shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.~~

~~(1A) — A person whose registration as a foreign lawyer has been cancelled other than under section 19 or suspended and who seeks or accepts employment by a solicitor or foreign lawyer without previously informing the solicitor or foreign lawyer that his registration has been cancelled or suspended commits an offence and is liable to a fine of \$500,000.~~

(1) A person who, while disqualified from practising as a solicitor by virtue of having been struck off the roll of solicitors or having been suspended from practising as a solicitor, seeks or accepts employment by a solicitor or solicitor corporation in connection with the practice of the solicitor or corporation without having previously informed the solicitor or corporation of the disqualification commits an offence and is liable on conviction to a fine of \$500,000. [Ord. No. 94 of 1997]

(1A) A person whose registration as a foreign lawyer has been cancelled (otherwise than under section 19) or is suspended commits an offence and is liable on conviction to a fine of \$500,000 if the person seeks or accepts employment by a legal practice entity without having previously informed the entity of the cancellation or suspension of registration. [Ord. No. 94 of 1997]

(2) No proceedings under this section shall be commenced except by or with the consent of the Secretary for Justice.

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55. Time limit for commencement of certain proceedings

Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of any offence against section 46, 47, 48, 50B or 54 may be brought at any time within 2 years next after the commission of the offence.

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PART VI

REMUNERATION OF SOLICITORS

Non-contentious Business

56. Agreement for remuneration for non-contentious business

~~(1) Whether or not any rules made under section 74 are in force, a solicitor and his client may, either before or after or in the course of the transaction of any non-contentious business by the solicitor, make an agreement as to the remuneration of the solicitor in respect thereof.~~

(1) A solicitor or solicitor corporation and a client of the solicitor or corporation may enter into an agreement as to the amount of remuneration payable to the solicitor or corporation for the performance by the solicitor or corporation of any non-contentious business. Such an agreement may be entered into either before, during or after the transaction of the business. [Ord. No. 94 of 1997]

(1A) Subsection (1) has effect irrespective of whether or not rules under section 74 are in force with respect to agreements for the remuneration of solicitors and solicitor corporations for non-contentious business. [Ord. No. 94 of 1997]

(2) The agreement may provide for the remuneration of the solicitor *or solicitor corporation* by a gross sum, or by commission or percentage or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration therein stipulated for either shall or shall not include all or any disbursements made by the solicitor *or solicitor corporation* in respect of searches, plans, travelling, stamps, fees or other matters. *[Ord. No. 94 of 1997]*

(3) The agreement shall be in writing and signed by the person to be bound thereby or his agent in that behalf.

(4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor *or solicitor corporation* *[Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*:

Provided that if on any taxation of costs the agreement is relied on by the solicitor *or solicitor corporation* and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the Court, and if on that certificate it appears just to the Court that the agreement should be cancelled, or the amount payable thereunder reduced, the Court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as it thinks fit. *[Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*

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57. — Remuneration of a solicitor who is a mortgagee

- (1) — ~~If a mortgage is made to a solicitor, either alone or jointly with any other person, he, or the firm of which he is a member, shall be entitled to recover from the mortgagor in respect of all business transacted and acts done by him or them in negotiating the loan, deducing and investigating the title to the property, and preparing and completing the mortgage, such usual costs as he or they would have been entitled to receive if the mortgage had been made to a person who was not a solicitor and that person had retained and employed him or them to transact that business and do those acts.~~
- (2) — ~~If, whether before or after the commencement of this Ordinance, a mortgage has been made to, or has become vested by transfer or transmission in, a solicitor, either alone or jointly with any other person, and if any business is transacted or acts done by that solicitor, or by the firm of which he is a member, in relation to that mortgage, or the security thereby created or the property comprised thereunder, then he or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or they would have been entitled to receive if the mortgage had been made to and had remained vested in a person who was not a solicitor and that person had retained and employed him or them to transact that business and do those acts.~~
- (3) — ~~In this section, "mortgage" includes any charge on any property for securing money or money's worth.~~

57. *Remuneration of solicitor or solicitor corporation who is mortgagee*

- (1) *If a mortgage is made to a solicitor or solicitor corporation, either alone or jointly with another person, the solicitor or firm of which the solicitor is a member, or the corporation, is entitled to recover from the mortgagor for all work done in connection with the mortgage the usual costs that would have been payable for the work if the mortgage had been made to a person who was not a solicitor or solicitor corporation and the person had employed the solicitor or firm, or the corporation, to do that work.*
- (2) *For the purposes of subsection (1), work done in connection with a mortgage includes business transacted and acts done in —*
- (a) negotiating the mortgage loan; and*
 - (b) deducing and investigating the title to the mortgaged property; and*
 - (c) preparing and completing the mortgage.*
- (3) *If —*
- (a) a mortgage is made, or is transferred or transmitted, to a solicitor or solicitor corporation, either alone or jointly with another person; and*

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(b) the solicitor or the firm of which the solicitor is a member, or the corporation, transacts any business or does any act in relation to the mortgage or the mortgaged property,

the solicitor or firm, or the corporation, is entitled to recover from the person for whom the work was done, and to charge against the security created by the mortgage, the usual costs that would have been payable if the mortgage had been made to and had remained vested in a person who was not a solicitor or solicitor corporation and that person had employed the solicitor or firm, or the corporation, to do that work.

(4) In this section -

"mortgage" (按揭) includes a charge on property for securing money or money's worth and the security created by the mortgage. [Ord. No. 94 of 1997]

Contentious Business

58. Power to make agreements

A solicitor may make with his client an agreement in writing as to his remuneration, in respect of any contentious business done or to be done by the solicitor for the client, which provides that the solicitor shall be remunerated either by a gross sum or by salary, or otherwise, and at either a greater or a less rate than that at which he would otherwise have been entitled to be remunerated.

58. Power to make agreement for remuneration for contentious business

(1) A solicitor or solicitor corporation may enter into an agreement in writing with a client as to the remuneration that is to be payable for any contentious business undertaken or to be undertaken by the solicitor or corporation for the client.

(2) Such an agreement may provide for the solicitor or corporation to be remunerated -

(a) by a fixed sum, by salary or other method of payment; and

(b) at a greater or smaller rate than that at which the solicitor or corporation would have otherwise been remunerated. [Ord. No. 94 of 1997]

59. Miscellaneous provisions

(1) An agreement such as is referred to in section 58-

(a) shall not affect the amount of, or any rights or remedies for the recovery of, any

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costs payable by the client to, or to the client by, any person other than ~~the solicitor~~ ***the client's solicitor or solicitor corporation***, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof:

Provided that the client shall not be entitled to recover from any other person under any order for the payment of any costs to which the agreement relates more than the amount payable by him to his solicitor ***or solicitor corporation*** in respect thereof under the agreement; ***[Ord. No. 94 of 1997]***

- (b) shall be deemed to exclude any claim by the solicitor ***or solicitor corporation*** ***[Ord. No. 94 of 1997]*** in respect of the business to which it relates other than -
 - (i) a claim for the agreed costs; or
 - (ii) a claim for such costs as are expressly excepted therefrom.
- (2) A provision in any such agreement that the solicitor ***or solicitor corporation*** shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as a solicitor, shall be void. ***[Ord. No. 94 of 1997]***

60. Enforcement of agreements in respect of contentious business

- (1) No action shall be brought upon any such agreement as is referred to in section 58, but the court may, on the application of any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be, liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect thereof.
- (2) On any such application the court-
 - (a) if it is of opinion that the agreement is in all respects fair and reasonable, may enforce it;
 - (b) if it is of opinion that the agreement is in any respect unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered thereby to be taxed as if the agreement had never been made;
 - (c) in any case, may make such order as to the costs of the application as it may think fit.
- (3) If the business covered by any such agreement is business done, or to be done, in any action, the amount payable under the agreement shall not be received by the solicitor ***or solicitor corporation*** until the agreement has been examined and allowed by a taxing officer of the court, and, if the taxing officer is of opinion that the agreement is unfair or

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unreasonable, he may require the opinion of the court to be taken thereon and the court may reduce the amount payable thereunder, or order the agreement to be cancelled and the costs covered thereby to be taxed as if the agreement had never been made. ***[Ord. No. 94 of 1997]***

- (4) When the amount agreed for under any such agreement has been paid by or on behalf of the client or by any person entitled so to do, the person making the payment may at any time within 12 months after payment apply to the court and the court, if it appears to it that the special circumstances of the case require the agreement to be reopened, may, on such terms as may be just, reopen the agreement and may order the costs covered thereby to be taxed and the whole or any part of the amount received by the solicitor ***or solicitor corporation*** to be repaid by him. ***[Ord. No. 94 of 1997]***
- (5) Where any such agreement is made by the client as the guardian or committee of, or as a trustee under a deed or will for, any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the taxing officer of the court, and that officer shall examine the agreement and may disallow any part thereof, or may require the opinion of the court to be taken thereon.
- (6) Any such client as is mentioned in subsection (5), who pays the whole or any part of the amount payable under the agreement without the agreement having been allowed by the taxing officer or by the court, shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the solicitor ***or solicitor corporation*** who accepts the payment may be ordered by the court to refund the amount received by him. ***[Ord. No. 94 of 1997]***

61. Death, incapability, or change of solicitor, etc.

- (1) If, after some business has been done under an agreement made in pursuance of the provisions of section 58 but before the solicitor has wholly performed it, the solicitor dies or becomes incapable of acting, any party to, or the representative of any party to, the agreement may apply to the court and the court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the solicitor had not died or become incapable of acting.

~~Provided that the court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done thereunder to be ascertained by taxation, and in that case—~~

- ~~(a) — the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and~~
- ~~(b) — payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.~~

Repealed [Ord. No. 94 of 1997]

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~~(2) The provisions of subsection (1) shall apply in the event of the client changing his solicitor (as, notwithstanding the agreement, he shall be entitled to do) before the conclusion of the business to which the agreement relates in the same manner as they apply when the solicitor dies or is incapacitated, with this modification, that if an order is made for the taxation of the amount due to the solicitor in respect of the business done under the agreement the court shall direct the taxing officer to have regard to the circumstances under which the change of solicitor has taken place, and the taxing officer, unless he is of opinion that there has been no default, negligence, improper delay or other conduct on the part of the solicitor affording to the client reasonable ground for changing his solicitor, shall not allow to the solicitor the full amount of the remuneration agreed to be paid to him.~~

(2) If, after some business has been done under an agreement made in accordance with section 58 but before the solicitor or solicitor corporation has finished it, the client of the solicitor or corporation terminates the engagement of the solicitor or corporation and engages another solicitor or solicitor corporation to finish the business, any party to the agreement, or any representative of any such party, may apply to the court for an order under subsection (2A). [Ord. No. 94 of 1997]

(2A) On the hearing of an application under subsection (2), the court has the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the solicitor or solicitor corporation whose engagement was terminated had continued to be engaged by the client. [Ord. No. 94 of 1997]

(2B) In exercising its jurisdiction under this section, the court may order the amount due for business performed under the agreement to be ascertained by taxation even though it is of the opinion that the relevant agreement is fair and reasonable. [Ord. No. 94 of 1997]

(2C) Where the court has made an order under subsection (2B), the following provisions apply -

(a) the taxing officer is, so far as possible, required to have regard to the terms of the agreement in ascertaining the amount due in respect of business done under it;

(b) payment of the amount that the taxing officer finds to be due is enforceable in the same manner as if the agreement had been fully performed;

(c) if subsection (2) applies, the taxing officer must have regard to the circumstances in which the change of solicitor or solicitor corporation took place and may allow the full amount of the remuneration agreed to be paid to the solicitor or corporation under the agreement only if that officer is of the opinion that there has been no default, negligence, improper delay or other misconduct on the part of the solicitor or corporation. [Ord. No. 94 of 1997]

(2D) A client of a solicitor or solicitor corporation is entitled, with respect to the

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performance of any contentious business for the client, to replace the solicitor or corporation with another solicitor or solicitor corporation despite anything to the contrary in an agreement made in accordance with section 58. [Ord. No. 94 of 1997]

- (3) In this section and in sections 60 and 63, "court" (法院) means-
- (a) in relation to an agreement under which any business has been done in any court having jurisdiction to enforce and set aside agreements, any such court in which any of that business has been done;
 - (b) in relation to an agreement under which no business has been done in any such court, and under which more than the sum mentioned in section 32 of the District Court Ordinance (Cap. 336) is payable, the Court of First Instance;
 - (c) in relation to an agreement under which no business has been done in any such court, and under which not more than the sum mentioned in section 32 of the District Court Ordinance (Cap. 336) is payable, the District Court.

62. Agreement excludes taxation

~~Subject to the provisions of sections 59, 60 and 61, the costs of a solicitor in any case where any agreement has been made in pursuance of the provisions of section 58 shall not be subject to taxation, nor to the provisions of section 66 with respect to the signing and delivery of a solicitor's bill.~~

62. Agreement excludes taxation of costs

Subject to sections 59, 60 and 61, the costs of a solicitor or solicitor corporation in relation to an agreement made in accordance with section 58 are not subject to taxation and are not subject to section 66 with respect to the signing and delivery of a bill of costs. [Ord. No. 94 of 1997]

63. Form of bill of costs for contentious business

~~Where the remuneration of a solicitor in respect of contentious business done by him is not the subject of such an agreement as is mentioned in section 58, the solicitor's bill of costs may at the option of the solicitor or solicitor corporation in respect of contentious business done by the solicitor or corporation is not the subject of an agreement of the kind referred to in section 58, the bill of costs of the solicitor or corporation may, at the option of the solicitor or corporation, [Ord. No. 94 of 1997] either contain detailed items or be for a gross sum:~~

Provided that-

- (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of 3 months from the date of the delivery to him of the bill, the party chargeable therewith may require the

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solicitor ~~or corporation~~ to deliver to him in lieu thereof a bill containing detailed items, and the gross sum bill shall thereupon be of no effect; ***[Ord. No. 94 of 1997]***

- (b) where an action is commenced on a gross sum bill, the court shall, if so requested by the party chargeable therewith before the expiration of 1 month from the service on that party of the writ or other originating process, order that the bill shall be taxed;
- (c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation, and the solicitor shall ~~furnish~~ ***or corporation must provide*** the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require. ***[Ord. No. 94 of 1997]***

General Provisions Regarding Remuneration

64. General provisions as to remuneration

- (1) Nothing in section 58, 59, 60, 61 or 62 shall give validity to-
 - (a) any purchase by a solicitor ~~or solicitor corporation~~ of the interest, or any part of the interest, of his client ***a client of the solicitor or corporation*** in any action, suit or other contentious proceeding; or ***[Ord. No. 94 of 1997]***
 - (b) any agreement by which a solicitor ~~or solicitor corporation~~ retained or employed to prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success in that action, suit or proceeding; or ***[Ord. No. 94 of 1997]***
 - (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or voluntary arrangement with creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).
- ~~(2) A solicitor may take security from his client for his costs to be ascertained by taxation or otherwise.~~
- ~~(2) A solicitor or solicitor corporation may take security from a client for the costs of the solicitor or corporation. [Ord. No. 94 of 1997]~~
- (3) Subject to the provisions of any rules of court, upon every taxation of costs with respect to any contentious business, the taxing officer may-
 - ~~(a) allow interest at such rate and from such time as he thinks just on moneys disbursed by the solicitor for the client, and on moneys of the client in the hands of, and improperly retained by, the solicitor;~~

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- (a) ~~allow interest at such rate and from such time as the taxing officer thinks just on money disbursed by the solicitor or solicitor corporation for the client, and on money of the client improperly held by the solicitor or corporation; and [Ord. No. 94 of 1997]~~
- (b) in determining the remuneration of the solicitor, have regard to the skill, labour and responsibility involved in the business done by him, the general complexity of the matter and the amount or value of the matter in issue.

65. Power of Court to order delivery of bill, etc.

- (1) The jurisdiction of the Court to make orders for the delivery by a solicitor ~~or solicitor corporation~~ of a bill of costs and for the delivery up of, or otherwise in relation to, any deeds, documents or papers in his possession, custody or power is hereby declared to extend to cases in which no business has been done by him in the Court. **[Ord. No. 94 of 1997]**
- (2) ~~If a mortgage has been made to, or has become vested by transfer or transmission in, a solicitor, either alone or jointly with any other person, and any business is transacted or acts are done by that solicitor, or by the firm of which he is a member, in relation to that mortgage or the security thereby created or the property comprised thereunder, then he or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or they would have been entitled to receive if the mortgage had been made to and had remained vested in a person who was not a solicitor and that person had retained and employed him or them to transact that business and do those acts. Repealed [Ord. No. 94 of 1997]~~
- (3) In this section and in sections 66, 67 and 68, "solicitor" (律師) includes the executors, administrators and assignees of the solicitor in question.

66. Action to recover costs

- (1) Subject to the provisions of this Ordinance, no action shall be brought to recover any costs due to a solicitor ~~or solicitor corporation~~ until 1 month after a bill thereof has been delivered in accordance with the requirements of this section:

Provided that, if there is probable cause for believing that the party chargeable with the costs is about to quit Hong Kong, or become a bankrupt, or to enter into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6), or to do any other act which would tend to prevent or delay the solicitor ~~or corporation~~ obtaining payment, the Court may, notwithstanding that 1 month has not expired from the delivery of the bill, order that the solicitor ~~or corporation~~ be at liberty to commence an action to recover ~~his costs~~ **the costs of the solicitor or corporation** and may order those costs to be taxed. **[Ord. No. 94 of 1997]**

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- (2) The said requirements are as follows -
- (a) the bill must be signed by the solicitor ***or a member of the solicitor corporation***, or if the costs are due to a firm by one of the partners of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and ***[Ord. No. 94 of 1997]***
 - (b) the bill must be delivered to the party to be charged therewith, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling house or last known place of abode,

and where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the solicitor ***or corporation*** to prove the contents of the bill and it shall be presumed, until the contrary is shown, to be a bill bona fide complying with this Ordinance. ***[Ord. No. 94 of 1997]***

67. Taxation of bills on application of party chargeable on solicitor or foreign lawyer

- (1) On the application, made within 1 month of the delivery of a ~~solicitor's bill~~ ***bill of costs of a solicitor or solicitor corporation*** or a foreign lawyer's bill, of the party chargeable therewith the Court shall, without requiring any sum to be paid into court, order that the bill shall be taxed and that no action shall be commenced thereon until the taxation is completed. ***[Ord. No. 94 of 1997]***
- (2) If no such application is made within the period mentioned in subsection (1), then, on the application of the solicitor ***or solicitor corporation*** ***[Ord. No. 94 of 1997]*** or the foreign lawyer or of the party chargeable with the bill, the Court may, upon such terms, if any, as it thinks fit (not being terms as to the costs of the taxation), order -
 - (a) that the bill shall be taxed;
 - (b) that, until the taxation is completed, no action shall be commenced on the bill, and any action already commenced be stayed:

Provided that -

- (i) if 12 months have expired from the delivery of the bill, or if the bill has been paid, or if a verdict has been obtained or a writ of inquiry executed in an action for the recovery of the costs covered thereby, no order shall be made on the application of the party chargeable with the bill except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the taxation as the Court may think fit;
- (ii) if the bill has been paid, no order under this subsection shall be made where the application for the order is made after the expiration of 12 months from the date of payment of the bill.

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- (3) Every order for the taxation of a bill shall require the taxing officer to tax not only the bill but also the costs of taxation and to certify what is due to or by the solicitor ~~or solicitor corporation~~ or the foreign lawyer in respect of the bill and in respect of the costs of the taxation. *[Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
- (4) If after due notice of any taxation either party thereto fails to attend, the taxing officer may proceed with the taxation ex parte.
- (5) Unless—
- (a) —the order for taxation was made on the application of the solicitor or the foreign lawyer and the party chargeable does not attend the taxation; or
- (b) —the order for taxation otherwise provides;

~~the costs of the taxation shall be paid according to the event of the taxation, that is to say, if one-sixth or more of the amount of the bill is taxed off, the solicitor or the foreign lawyer shall pay the costs, but otherwise the party chargeable shall pay the costs:~~

~~Provided that—~~

- (i) —if, in the case of a bill for non-contentious business, not less than half of the amount of the bill before taxation consists of costs for which no scale charge is prescribed, for the reference in this subsection to one-sixth of the amount of the bill there shall be deemed to be substituted a reference to one-fifth thereof;
- (ii) —the taxing officer may certify any special circumstances relating to the bill or the taxation thereof to the Court, and the Court may make thereon any such order as it thinks fit respecting the payment of the costs of the taxation.

Repealed [Ord. No. 94 of 1997]

67A. Costs of taxation

- (1) *The solicitor or solicitor corporation or the foreign lawyer concerned is liable to pay the costs of a taxation under section 67 if one-sixth or more of the bill of the solicitor or corporation or the foreign lawyer is taxed off, but otherwise the party who is charged with the bill is liable to pay the costs of the taxation. [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
- (2) *However, the solicitor or solicitor corporation or the foreign lawyer concerned is liable to pay the costs of the taxation if, in the case of a bill of costs for non-contentious business — [Statute Law (Miscellaneous Provisions) Ordinance 2012]*

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- (a) ***not less than half of the amount of the bill before taxation consists of costs for which no scale charge is prescribed by rules of the Costs Committee; and***
- (b) ***one-fifth or more of the bill is taxed off.***
- (3) ***Subsections (1) and (2) do not apply if—***
- (a) ***the order for taxation was made on the application of the solicitor or solicitor corporation or the foreign lawyer and the party charged does not attend the taxation; or [Statute Law (Miscellaneous Provisions) Ordinance 2012]***
- (b) ***the order for taxation or an order under subsection (4) otherwise provides.***
- (4) ***The taxation officer may, if of the opinion that there are special circumstances relating to the bill of costs of a solicitor or solicitor corporation or a foreign lawyer or to the taxation of the bill, refer the matter to the Court. The Court may make in respect of the reference such order as at it considers appropriate as to the payment of the costs of the taxation. [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Ordinance 2012]***

68. Taxation application of third parties

- (1) Where a person other than the person who is the party chargeable with the bill for the purposes of section 67 has paid, or is or was liable to pay, the bill to the solicitor ***or solicitor corporation*** or the foreign lawyer, or to the party chargeable with the bill, that person or his executors, administrators or assignees may apply to the Court for an order for the taxation of the bill as if he were the party chargeable therewith, and the Court may make thereon the same order, if any, as it might have made if the application had been made by that party: ***[Ord. No. 94 of 1997]***

Provided that, in cases where the Court has no power to make an order except in special circumstances, the Court may, in considering whether there are special circumstances sufficient to justify it in making an order, take into account circumstances affecting the applicant but which do not affect the party chargeable with the bill.

- (2) If a trustee, executor or administrator has become liable to pay a bill of a solicitor ***or solicitor corporation*** or of a foreign lawyer the Court may, upon the application of any person interested in any property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill, and upon such terms, if any, as it thinks fit, order the bill to be taxed, and may order such payments, in respect of the amount found due to or by the solicitor ***or corporation*** or the foreign lawyer and in respect of the costs of the taxation, to be made to or by the applicant, or to or by the solicitor ***or corporation*** or the foreign lawyer, or to the executor, administrator or trustee as it thinks fit: ***[Ord. No. 94 of 1997]***

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Provided that in considering any such application the Court shall have regard to -

- (a) the provisions of section 67 as to applications by the party chargeable with a solicitor's bill **bill of costs of a solicitor or solicitor corporation** or a foreign lawyer's bill so far as they are capable of being applied to an application made under this subsection; **[Ord. No. 94 of 1997]**
 - (b) the extent and nature of the interest of the applicant.
- ~~(3) If an applicant under subsection (2) pays any money to the solicitor or the foreign lawyer, he shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the solicitor or the foreign lawyer had.~~
- (3) An applicant under this section who pays money to a solicitor or solicitor corporation has the same right to be paid the money by the trustee, executor or administrator chargeable with the bill of costs as the solicitor or corporation had. [Ord. No. 94 of 1997]**
- (4) On an application made under this section -
 - (a) except in special circumstances, no order shall be made for the taxation of a bill which has already been taxed;
 - (b) the Court may, if it orders taxation of the bill, order the solicitor **or solicitor corporation** or the foreign lawyer to deliver to the applicant a copy of the bill upon payment of the costs of that copy. **[Ord. No. 94 of 1997]**

69. General provisions as to taxations

- ~~(1) Every application for an order for the taxation of a solicitor's bill or a foreign lawyer's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by a solicitor or by a foreign lawyer shall be made in the matter of that solicitor or that foreign lawyer.~~
- (1) An application for an order for the taxation of a bill of costs of a solicitor or solicitor corporation, or for the delivery of such a bill, and for the delivering up of documents by a solicitor or solicitor corporation is to be made in the matter of the solicitor or corporation. [Ord. No. 94 of 1997]**
- (2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

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70. Charging orders

Any court in which a solicitor *or solicitor corporation* has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the solicitor *or corporation* entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding and may make such orders for the taxation of the said costs and for raising money to pay, or for paying, the said costs out of the said property, as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the solicitor *or corporation*: [Ord. No. 94 of 1997]

Provided that no order shall be made if the right to recover the costs is barred by any statute of limitations.

71. Revival of order for payment of costs

Whenever any judgment or order has been made for payment of costs in any action and such action afterwards becomes abated, it shall be lawful for any person interested under such judgment or order to revive such action, and thereupon to prosecute and enforce such judgment or order, and so from time to time as often as any such abatement may happen.

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PART VII

RULES

72. Power of Chief Justice to make rules

The Chief Justice may make rules -

- (a) in relation to the admission of solicitors and of barristers and the appointment of notaries public -
- (i) regulating the manner in which applications for admission under sections 4, ~~27~~ and ~~27A~~ **and 27** shall be made and the forms to be employed in respect thereof; ***[Statute Law (Miscellaneous Provisions) Ordinance 2012]***
 - (ii) regulating the procedure and constitution of the Court at the hearing of applications under sections 4, ~~27~~ and ~~27A~~ **and 27**; ***[Statute Law (Miscellaneous Provisions) Ordinance 2012]***
 - (iii) regulating the manner in which applications for appointment under section 40A shall be made and the forms to be employed in respect thereof;
 - (iv) exempting, in any particular case, a person seeking admission under section 4 or 27 or appointment under section 40A from compliance with all or any of the conditions prescribed for such admission or appointment by this Ordinance, subject to such conditions as may appear necessary;
 - (v) providing for the duties of the Registrar in connection with such admissions and appointments;
 - (vi) providing for the forms of the roll of solicitors, the roll of barristers and the register of notaries public, the mode in which they shall be kept and the contents thereof;
 - (vii) prescribing any fees payable in connection with such admissions and appointments;
 - (viii) (Repealed)
 - (ix) (Repealed)
 - (x) regulating the granting of exemption from the provisions of any of such rules and of the compliance with any terms imposed upon the grantees of such exemption and prescribing the form of any statutory declaration evidencing such compliance;
- (b) in relation to the conduct of barristers, to provide for –

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- (i) the making of a complaint to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel;
 - (ii) the conduct of proceedings before a Barristers Disciplinary Tribunal; and
 - (iii) the procedure for making and hearing an application under section 38; and
- (c) generally to prescribe or provide for-
- (i) any other certificate, form or other document required under this Ordinance;
 - (ii) any other fee which is required to be prescribed under this Ordinance;
 - (iii) the better carrying into effect of the provisions of this Ordinance; and
 - (iv) anything which under this Ordinance is to be or may be prescribed by the Chief Justice.

72A. Rules for barristers in Hong Kong

The Chief Justice may make rules in relation to the admission of persons who seek to qualify or have qualified as barristers in Hong Kong -

- (a) regulating the enrolment of students seeking to become barristers in Hong Kong;
- (b) regulating the manner in which pupillage may be served, including applications for pupillage, disqualifications in respect of pupillage, approval and termination of pupillage and the period and requirements of pupillage;
- (ba) regulating the examinations to be passed by students seeking to become barristers in Hong Kong;
- (bb) prescribing the qualifying period of active practice for the purposes of section 31;
- (c) generally for the better control of such students.

72AA. Power of Bar Council to make rules

Subject to the prior approval of the Chief Justice, the Bar Council may make rules -

- (a) in respect of the professional practice, conduct and discipline of barristers and pupils;
- (b) for the purpose of harmonizing the relationship of barristers inter se and, with the prior approval of the Council, governing the relationship of ~~solicitors and barristers~~ with solicitors and solicitor corporations; [*Statute Law (Miscellaneous Provisions) Bill*]

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2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

- (c) regulating the issuing of practising certificates to barristers and employed barrister's certificates to employed barristers including, without limiting the foregoing, the fees payable for, the conditions of issue of, the manner of applying for, the period and form of and the publication of the issue and suspension of, such certificates;
- (d) providing for any continuing legal education or training that must be undertaken by barristers and pupils and the consequences of failing to do so;
- (e) providing for the conduct of an inquiry and investigation by a Barristers Disciplinary Tribunal;
- (f) requiring a barrister or pupil whose conduct has been established to the satisfaction of the Bar Council to amount to a breach of proper professional standards to pay the Bar Council's costs of investigating the conduct which resulted in the order;
- (g) regulating the serving of pupillage and the manner in which any person shall qualify for admission under section 27, including, without limiting the foregoing, the period of pupillage and the examinations to be passed;
- (h) respecting the admission of persons on the basis of qualifications acquired outside Hong Kong including, without limiting the foregoing, the qualifications for admission, the examinations to be passed and the fees to be paid;
- (i) respecting the exemption by it of any person from compliance with the provisions of any rules made under this section and the conditions upon which such exemption may be granted in any particular case; and
- (j) prescribing anything which, under this Ordinance, is to be or may be prescribed by the Bar Council.

72AB. Conflict between rules made by Chief Justice and Bar Council

Where power is given to -

- (a) the Chief Justice; and
- (b) the Bar Council,

to make rules in respect of the same matter, rules made by either or both of them in respect of such a matter shall be valid unless there is a conflict between such rules, in which case the rules made by the Chief Justice shall be given precedence to the extent of such conflict.

72B. (Repealed)

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73. Power of the Council to make rules

- (1) The Council may make rules -
- (a) providing for -
- (i) ~~the professional practice, conduct and discipline of solicitors, foreign lawyers, employees of solicitors and foreign lawyers and trainee solicitors;~~
- (i) the professional practice, conduct and discipline of legal practice entities, members and employees of such entities, solicitor advocates, and trainee solicitors; and [Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]***
- (ii) the restriction of payment of commission to unqualified persons; and
- (iii) ~~for the purpose of harmonizing the relationship of solicitors inter se and, with the prior approval of the Bar Council, governing the relationship of solicitors and barristers;~~
- (iii) harmonizing the relationship of solicitors and solicitor corporations among themselves; and***
- (iv) subject to the approval of the Bar Council, governing the relationship of barristers with solicitors and solicitor corporations. [Ord. No. 94 of 1997]***
- (aa) regulating the issue to solicitors of practising certificates and the fees payable for, the conditions of issue of, the manner of applying for, the period and form of, the publication of the issue and the suspension of such practising certificates and generally in relation thereto;
- (ab) providing for any continuing legal education or training that must be undertaken by solicitors;
- (b) in relation to the keeping by solicitors ***and solicitor corporations*** [Ord. No. 94 of 1997] of accounts, providing for -
- (i) the opening and keeping by solicitors ***and solicitor corporations*** of accounts at banks of clients' money; [Ord. No. 94 of 1997]
- (ii) the keeping by solicitors ***and solicitor corporations*** of accounts containing particulars and information as to moneys received, held or paid both for or on account of their clients; [Ord. No. 94 of 1997]
- (iii) empowering the Council to take such action as may be necessary to

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enable them to ascertain whether or not such rules are being complied with;

- (iv) regulating the manner in which solicitors **and solicitor corporations** shall deal with money held by them in a fiduciary capacity and the books of accounts to be kept in respect thereof and for the auditing of such accounts; **[Ord. No. 94 of 1997]**
 - (v) the qualifications to be held by an accountant by whom an accountant's report may be given;
 - ~~(vi) the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or of his firm and of any other relevant documents with a view to the signing of a report to be delivered by the solicitor under section 8;~~
 - (vi) the nature and extent of the examination by the accountant of the accounting records of a solicitor or the solicitor's firm, or a solicitor corporation, and of any other relevant documents with a view to the preparation of a report to be delivered to the Council in accordance with section 8; [Ord. No. 94 of 1997]**
 - (vii) the form of an accountant's report and the information to be contained therein in accordance with section 8(1);
 - (viii) the evidence, if any, which shall satisfy the Council that the delivery of an accountant's report is unnecessary and the cases in which such evidence is or is not required;
 - (ix) specifying in such circumstances as may be set forth in the rules a different accounting period from that specified in section 8(2); and
 - (x) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of section 8;
- (c) providing for the conduct of an inquiry and investigation by a Solicitors Disciplinary Tribunal under section 9;
 - (caa) providing for the practice and procedure to be followed in connection with the submission of a matter by the Council to the Tribunal Convenor under section 9A(1A);
 - (cab) providing for the practice and procedure to be followed in connection with the disposal of a matter by the Tribunal Convenor under section 9AB;
 - (ca) respecting procedures for investigation by an inspector under section 8AA;
 - (cb) requiring a solicitor, foreign lawyer, trainee solicitor or employee **legal practice**

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entity, a member or employee of such an entity, or a trainee solicitor to whom a letter of disapproval is sent by the Council, to pay the Council's costs of investigating the conduct which resulted in the letter of disapproval; [***Ord. No. 94 of 1997***]

- (d) regulating the employment of trainee solicitors and examinations, and in particular, without prejudice to the generality of the foregoing, providing for -
 - (i) the manner in which any person shall qualify for admission under section 4(1)(a) including, in particular, the period of employment, if any, of a trainee solicitor in any particular case, the examination or examinations to be passed, the courses to be completed and notices and forms to be used in connection therewith; and
 - (ii) (Repealed)
- (da) respecting the admission of persons under section 4(1)(b), including the qualifications for admission, examinations and the fees to be paid for applications and examinations;
- (db) respecting the registration of foreign lawyers, foreign firms and Associations, including applications for registration, qualification for registration, fees for application and registration, period and form of registration, conditions of registration, suspension of registration and cancellation of registration;
- (dc) respecting the practice of ~~Hong Kong firms, foreign firms and Associations;~~ [***Ord. No. 94 of 1997***]
- (dd) prohibiting the practice of Hong Kong law by foreign lawyers and for that purpose the Council may define, limit or expand the meaning of the practice of Hong Kong law;
- (de) regulating the issue to solicitor advocates of higher rights of audience certificates and the form of, and other matters relating to, the certificates;
- (e) enabling the Council to exempt any person from compliance with the provisions of any such rules and to impose and enforce conditions upon which such exemption may be granted in any particular case; and
- (f) prescribing any thing which, under this Ordinance, is to be or may be prescribed by the Council.

(1A) Without limiting the powers conferred on the Council by subsection (1) to make rules with respect to solicitor corporations, the Council may make rules —

(a) for the management and control of solicitor corporations by solicitors; and

(b) specifying the conditions subject to which companies may be approved as

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solicitor corporations (including conditions as to the names that those companies may use); and

(c) specifying the conditions that companies so approved must comply with as a condition of their continued approval as solicitor corporations (including the payment of specified fees for that approval); and

(d) for regulating the conduct of the affairs of solicitor corporations.

(1B) Without limiting the powers conferred on the Council by subsection (1) to make rules with respect to foreign lawyer corporations, the Council may make rules —

(a) for the registration of foreign lawyer corporations, including applications for registration, qualifications for registration and fees for registration and applications for registrations; and

(b) for the management and control of foreign lawyer corporations by solicitors; and

(c) specifying the conditions subject to which companies or overseen non-Hong Kong companies may be registered as foreign lawyer corporations (including conditions as to the names that those companies may use); and [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

(d) specifying the conditions that companies so registered must comply with as a condition of their continued registration as foreign lawyer corporations; and

(e) for regulating the conduct of the affairs of foreign lawyer corporations. [Ord. No. 94 of 1997]

(2) Every rule made by the Council under this section shall be subject to the prior approval of the Chief Justice.

(2A) For the avoidance of doubt, it is declared that in subsection (1)(a)(i), “professional practice” (專業執業), in relation to a solicitor, means acting as a solicitor or the business of acting as a solicitor, whether as a partner, sole practitioner, assistant solicitor or consultant in a Hong Kong firm, as a member or an employee of a solicitor corporation, or as an employee of a non-solicitor employer. [Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]

(3) No rule made under subsection (1)(b), (c) or (d) shall apply to a person to whom section 75(1) applies insofar as such person is acting in the course of the employment which gives rise to the application of that section.

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73A. Indemnity rules

- (1) The Council may make rules (in this Ordinance referred to as "indemnity rules") concerning indemnity against loss arising from claims in respect of any description of civil liability incurred -
 - (a) ~~by a solicitor or former solicitor in connection with his practice or with any trust or of which he is or formerly was a trustee;~~
 - (b) ~~by an employee of a solicitor or former solicitor in connection with that solicitor's practice or with any trust of which that solicitor or the employee is or formerly was a trustee.~~
 - (a) by a person who is a solicitor or solicitor corporation, or a former solicitor or former solicitor corporation, in connection with the person's legal practice, or with any trust of which the person is or formerly was a trustee;***
or
 - (b) by an employee of such a person in connection with the person's legal practice, or with any trust of which that person or employee is or formerly was a trustee. [Ord. No. 94 of 1997]***
- (2) For the purpose of providing such indemnity, indemnity rules -
 - (a) may authorize or require the Society, by itself or jointly with the Society of Notaries, to establish and maintain a fund or funds;
 - (b) may authorize or require the Society, by itself or jointly with the Society of Notaries, to take out and maintain insurance with authorized insurers;
 - (c) ~~may require solicitors or any specified class of solicitors~~ ***solicitors or solicitor corporations, or any specified class of solicitors or solicitor corporations,*** to take out and maintain insurance with authorized insurers. ***[Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]***
- (3) Without prejudice to the generality of subsections (1) and (2), indemnity rules -
 - (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
 - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (2)(a) and ~~require solicitors or any class of solicitors~~ ***or solicitor corporations, or any class of solicitors or solicitor corporations,*** to make payments to any such fund; ***[Ord. No. 94 of 1997]***
 - (c) may require solicitors ~~or any class of solicitors~~ ***or solicitor corporations, or any class of solicitors or solicitor corporations,*** to make payments by way of

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premium on any insurance policy maintained by the Society by virtue of subsection (2)(b); ***[Ord. No. 94 of 1997]***

- (d) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (2)(c);
- (e) may authorize the Society to determine the amount of any payments required by the rules, subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
- (f) ~~may specify circumstances in which, where a solicitor (not being a solicitor who is exempt from complying with the rules) for whom indemnity is provided has failed to comply with the rules, the Society or insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply;~~

(f) may specify circumstances in which, where a solicitor or solicitor corporation (not being a solicitor or solicitor corporation who is exempt from complying with the rules) for whom indemnity is provided has failed to comply with the rules, the Society or insurers may bring legal proceedings against the solicitor or corporation for money paid as an indemnity as a result of the failure to comply; [Ord. No. 94 of 1997]

(g) may specify circumstances in which solicitors or solicitor corporations are exempt from the rules; ***[Statute Law (Miscellaneous Provisions) Bill 2012]***
[Statute Law (Miscellaneous Provisions) Ordinance 2012]

(h) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and

(i) may contain incidental, procedural or supplementary provisions.

(4) If any solicitor or solicitor corporation (not being a solicitor or solicitor corporation who is exempt from complying with indemnity rules) fails to comply with the rules any person may make a complaint in respect of that failure to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel. ***[Ord. No. 94 of 1997]***

(5) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of indemnity under this section.

(6) Every rule made by the Council under this section shall be subject to the prior approval of the Chief Justice.

(7) No rule made under this section shall apply to a person to whom section 75 applies in so far as such person is acting in the course of the employment which gives rise to the application of that section.

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- (8) For the avoidance of doubt, it is declared that in subsection (1)(a) and (b), “practice” (執業業務), in relation to a solicitor, means acting as a solicitor or the business of acting as a solicitor, whether as a partner, sole practitioner, assistant solicitor or consultant in a Hong Kong firm, as a member or an employee of a solicitor corporation or as an employee of a non-solicitor employer. [*Statute Law (Miscellaneous Provisions) Bill 2012*] [*Statute Law (Miscellaneous Provisions) Ordinance 2012*]

73B. Fees for continuing legal education courses

The Council may by resolution determine the fees that must be paid for continuing legal education courses.

73C. Council may delegate

The Council may delegate to any person or to a committee of the Council any of the powers or duties granted or imposed on the Council or the Society under this Ordinance, other than the power to make rules under sections 73 and 73A.

73CA. Power of Assessment Board to make rules

- (1) The Assessment Board may make rules –
- (a) in relation to applications for higher rights of audience made under section 39H, to provide for –
 - (i) the requirements referred to in section 39I(1)(c), including any requirement regarding possession or acquisition of qualifications, completion of courses or training, or passing of assessments or examinations or exemptions from assessments or examinations, relating to advocacy skills, practice and procedure applicable to courts, ethics or other matters;
 - (ii) the information referred to in section 39J(1)(b);
 - (iii) the fee referred to in section 39J(1)(c);
 - (iv) the alternative requirements referred to in section 39L(1)(a), including any requirement regarding possession or acquisition of advocacy or litigation experience (including experience in relation to tribunal or arbitration proceedings), or judicial or quasi-judicial experience (including experience as a member of any tribunal or as an arbitrator);
 - (v) any enquiries made by the Board with the Council under section 39M(1)(a), including the manner in which the Council is to provide information to the Board as a result of the enquiries;

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- (vi) any requirements made by the Board in respect of the applicants under section 39M(1)(b), including the manner in which the applicants are to comply with the requirements and the procedure at any interview conducted as a result of the requirements; and
 - (vii) any other matters relating to the applications or determination of the applications; and
- (b) in relation to the Board and its members, to provide for –
- (i) the procedure of the Board, including the procedure relating to meetings of the Board, and written resolutions adopted as decisions of the Board without a meeting of the Board;
 - (ii) the disclosure of information by members of the Board having actual or potential interest in matters before the Board, and any related matters, including the imposition, despite section 39G, of restrictions on the participation by the members in the performance of any function of the Board (whether by reference to attendance or voting at meetings or approval of written resolutions or otherwise);
 - (iii) the appointment of persons to act in the place of the members referred to in subparagraph (ii) (whether as the chairperson or other members of the Board);
 - (iv) the appointment of members of the Board as members of committees for the purposes of section 73CB, and the resignation or removal of members of the committees, and the procedure of the committees; and
 - (v) any other matters relating to the Board and its members.
- (2) Without limiting subsection (1), any rules made under subsection (1)(a)(i) that provide for requirements regarding completion of any courses or training, or passing of any assessments or examinations, may provide for –
- (a) the persons or organizations by or on behalf of whom or which the courses or training, or the assessments or examinations, are provided or organized, or the approval of those persons or organizations;
 - (b) in relation to the courses or training –
 - (i) the arrangements for the courses or training, including the form, length and content, and the manner of conduct, of the courses or training; and
 - (ii) the approval of the courses or training;
 - (c) in relation to the assessments or examinations –
 - (i) the arrangements for the assessments or examinations, including the

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standards or criteria to be met by individuals in order to pass the assessments or examinations, and any arrangements for appeal or review in respect of matters concerning the assessments or examinations; and

- (ii) the qualifications and conditions for appointment of examiners or other persons undertaking assessment of individuals at the assessments or examinations; and
- (d) any other matters relating to the courses or training, or the assessments or examinations.

73CB. Assessment Board may delegate

- (1) The Assessment Board may delegate to any committee of the Board any of its powers or duties in relation to any interview conducted as a result of a requirement made by the Board under section 39M(1)(b).
- (2) For the purposes of subsection (1), the Assessment Board may establish a committee of the Board by appointing as members of the committee at least 3 members of the Board, of whom –
 - (a) one must be a member of the Board appointed under section 39E(3)(b)(i);
 - (b) one must be a member of the Board appointed under section 39E(3)(b)(ii); and
 - (c) one must be a member of the Board appointed under section 39E(3)(b)(iii).
- (3) Subject to the other provisions of this Ordinance, a committee established under subsection (2) may regulate its own procedure.
- (4) Any delegation under subsection (1) may be made generally or in relation to any particular case (whether in relation to any particular interview or interviews or otherwise).

73D. Power of Council of Society of Notaries to make rules

- (1) The Council of the Society of Notaries may make rules -
 - (a) providing for –
 - (i) the requirements to be complied with by persons applying for appointment as a notary public under section 40A;
 - (ii) the professional practice, conduct and discipline of notaries public and their employees;
 - (iii) the restriction of payment of commission to unqualified persons; and

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- (iv) for the purpose of harmonizing the relationship of notaries inter se and, with the prior approval of the Bar Council and the Council of the Law Society, as the case may be, governing the relationship of notaries public and with solicitors, solicitor corporations and barristers respectively; *[Letter of 7 March 2012 by DoJ] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
 - (b) regulating the issue to notaries public of practising certificates and the fees payable for, the conditions of issue of, the manner of applying for, the period and form of, the publication of the issue and the suspension of such practising certificates and generally in relation to practising certificates;
 - (c) providing for the conduct of any inquiry by a Notaries Public Disciplinary Tribunal;
 - (d) respecting the examinations to be passed by persons applying for appointment as notaries public under section 40A and the fees payable to the Council of the Society of Notaries in connection with such examinations;
 - (e) enabling the Council of the Society of Notaries to exempt any person from compliance with the provisions of any such rules and to impose and enforce conditions upon which such exemption may be granted in any particular case;
 - (f) prescribing any thing which, under this Ordinance, is to be or may be prescribed by the Council of the Society of Notaries.
- (2) Without limiting the effect of subsection (1)(a)(ii), rules made under that paragraph may provide –
- (a) for the circumstances in which employees of notaries public shall be liable to be disciplined;
 - (b) for the bringing of disciplinary proceedings against employees of notaries public; and
 - (c) for the sanctions that may be imposed in respect of breaches of discipline by employees of notaries public,

and such rules may provide that any provision of Part IV dealing with the discipline of notaries public (including the appointment of members of the Notaries Public Disciplinary Tribunal Panel to constitute a Notaries Public Disciplinary Tribunal to inquire into the conduct of a notary public) shall apply in relation to employees of notaries public.

- (3) Every rule made by the Council of the Society of Notaries under this section shall be subject to the prior approval of the Chief Justice.

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73E. Indemnity rules for notaries public

- (1) The Council of the Society of Notaries may make rules concerning indemnity against loss arising from claims in respect of any description of civil liability incurred -
 - (a) by a notary public or former notary public in connection with his practice; or
 - (b) by an employee or a former employee of a notary public or former notary public in connection with that notary public's practice.
- (2) For the purpose of providing such indemnity, rules made under this section -
 - (a) may authorize or require the Society of Notaries, by itself or jointly with the Law Society, to establish and maintain a fund or funds;
 - (b) may authorize or require the Society of Notaries, by itself or jointly with the Law Society, to take out and maintain insurance with authorized insurers;
 - (c) may require notaries public or any specified class of notaries public to take out and maintain insurance with authorized insurers.
- (3) Without prejudice to the generality of subsections (1) and (2), rules made under this section -
 - (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
 - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (2)(a) and require notaries public or any class of notaries public to make payments to any such fund;
 - (c) may require notaries public or any class of notaries public to make payments by way of premium on any insurance policy maintained by the Society of Notaries by virtue of subsection (2)(b);
 - (d) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (2)(c);
 - (e) may authorize the Society of Notaries to determine the amount of any payments required by the rules, subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
 - (f) may specify circumstances in which, where a notary public (not being a notary public who is exempt from complying with the rules) for whom indemnity is provided has failed to comply with the rules, the Society of Notaries or insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply;
 - (g) may specify circumstances in which notaries public are exempt from the rules

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made under this section;

- (h) may empower the Council of the Society of Notaries to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and
 - (i) may contain incidental, procedural or supplementary provisions.
- (4) The Society of Notaries shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of indemnity under this section.
- (5) Every rule made by the Council of the Society of Notaries under this section shall be subject to the prior approval of the Chief Justice.

73F. Council of Society of Notaries may delegate

The Council of the Society of Notaries may delegate to any person or to a committee of the Council of the Society of Notaries any of the powers or duties granted or imposed on the Society of Notaries or its Council under this Ordinance, other than the power to make rules under sections 73D and 73E.

74. Costs Committee

- (1) There is hereby established a Costs Committee consisting of the following persons -
- (a) a judge of the Court of First Instance appointed by the Chief Justice as Chairman;
 - (b) the Registrar of the High Court or a senior deputy registrar or deputy registrar of the High Court;
 - (c) for the purposes of the Solicitors (General) Costs Rules (Cap. 159 sub. leg. G), the Director of Lands, or his representative approved by the Chief Justice;
 - (ca) for the purposes of the Solicitors (Trade Marks and Patents) Costs Rules (Cap. 159 sub. leg. I), the Director of Intellectual Property, or his representative approved by the Chief Justice;
 - (d) the President and one of the Vice-Presidents of the Society and 2 members of the Society nominated by the Society and approved by the Chief Justice.
 - (e) 3 persons appointed by the Chief Executive who, in the opinion of the Chief Executive, can represent the interests of consumers of legal services.
- (1A) None of the persons appointed under subsection (1)(e) may be a legal practitioner or a public officer.

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- (2) The quorum for a meeting of the Costs Committee is the Chairman and 5 members.
- (3) The Costs Committee may make rules -
- (a) providing for the remuneration of solicitors or solicitor corporations in respect of non-contentious business; *[Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
 - (b) prescribing that, as regards the mode of remuneration, it shall be according to the scale of rates or percentage varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another;
 - (c) regulating the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say -
 - (i) the position of the party for whom the solicitor or solicitor corporation is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like; *[Ord. No. 94 of 1997] [Statute Law (Miscellaneous Provisions) Ordinance 2012]*
 - (ii) the place where, and the circumstances in which, the business or any part thereof is transacted;
 - (iii) the amount of the capital money or rent to which the business relates;
 - (iv) the skill, labour and responsibility involved therein on the part of the solicitor or solicitor corporation; *[Statute Law (Miscellaneous Provisions) Bill 2012] [Statute Law (Miscellaneous Provisions) Ordinance 2013]*
 - (v) the number and importance of the documents prepared or perused, without regard to length;
 - ~~(d) authorizing and regulating the taking by a solicitor from his client of security for payment or otherwise, which may become due to him under any such rule; and~~
(d) authorizing and regulating the taking by a solicitor or a solicitor corporation from a client of security for any money or thing that may become due to the solicitor or corporation under any such rule; and [Ord. No. 94 of 1997]
 - (e) authorizing and regulating the allowance of interest on costs and expenses.
- (4) Every rule made under this section shall be subject to the prior approval of the Chief Justice.
- (5) So long as any rules made under this section are in operation, taxation of bills of costs of

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solicitors ***and solicitor corporations*** in respect of non-contentious business shall, subject to the provisions of section 5, be regulated by such rules.

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PART VIII

GENERAL

74A. Standing Committee on Legal Education and Training

- (1) There is established by this section a Standing Committee on Legal Education and Training.
- (2) The functions of the committee are -
 - (a) to keep under review, evaluate and assess -
 - (i) the system and provision of legal education and training in Hong Kong;
 - (ii) without prejudice to the generality of subparagraph (i), the academic requirements and standards for admission to the Postgraduate Certificate in Laws programme;
 - (b) to monitor the provision of vocational training of prospective legal practitioners in Hong Kong by organizations other than the Society or the Hong Kong Bar Association;
 - (c) to make recommendations on matters referred to in paragraphs (a) and (b); and
 - (d) to collect and disseminate information concerning the system of legal education and training in Hong Kong.
- (3) The committee shall consist of -
 - (a) 15 members appointed by the Chief Executive of whom-
 - (i) 2 shall be persons nominated by the Chief Justice;
 - (ii) 1 shall be a person nominated by the Secretary for Justice;
 - (iii) 1 shall be a person nominated by the Secretary for Education;
 - (iv) 2 shall be persons nominated by the Society;
 - (v) 2 shall be persons nominated by the Hong Kong Bar Association;
 - (vi) 2 shall be persons nominated by the Vice-Chancellor of the University of Hong Kong;
 - (vii) 2 shall be persons nominated by the President of the City University of Hong Kong;

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- (viiia) 2 shall be persons nominated by the Vice-Chancellor of The Chinese University of Hong Kong;
 - (viii) 2 shall be members of the public; and
 - (ix) 1 shall be a person nominated by ~~The Federation for Continuing Education in Tertiary Institutions~~ the Federation for Self-financing Tertiary Education, a non-profit-making educational organization, from among its members which provide continuing legal education courses in Hong Kong; and *[Statute Law (Miscellaneous Provisions) Ordinance 2014]*
- (b) a chairman appointed by the Chief Executive after consultation with the persons and organizations making nominations pursuant to paragraph (a)(i) to (viiia) and (ix).
- (4) A member of the committee who is unable to attend a meeting of the committee, except for a member appointed pursuant to subsection (3)(a)(viii), may, subject to the consent of the chairman, send a substitute to attend the meeting in his place and the substitute shall be deemed to be a member of the committee for the purpose of that meeting.
 - (5) A member of the committee including the chairman shall hold office for a term not exceeding 2 years.
 - (6) A member of the committee including the chairman may at any time resign from the committee by giving notice in writing of his resignation to the Chief Executive.
 - (7) The Secretary for Justice may publish notice of the appointment or termination of membership of a member (including the chairman) appointed pursuant to this section in the Gazette.
 - (8) The committee shall report annually to the Chief Executive and its annual report shall be tabled in the Legislative Council.
 - (9) The committee may determine its own procedure.

74B. Certain certificates to be evidence

- (1) *A certificate purporting to be signed by the Registrar and stating that the name of a person was or was not, at a particular time, entered on the roll of solicitors or the roll of barristers is, for all purposes, evidence that the person was or was not, at that time, a solicitor or barrister.*
- (2) *A certificate purporting to be signed by the Secretary General of the Society and stating that a company was or was not, at a particular time, entered on the roll of solicitor corporations is, for all purposes, evidence that the company was or was not,*

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at that time, a solicitor corporation.

(3) A certificate purporting to be signed by the Secretary General of the Society and stating that a person, firm or corporation was or was not, at a particular time, registered as a foreign lawyer, foreign firm or foreign lawyer corporation is, for all purposes, evidence that the person, firm or corporation was or was not, at that time, a foreign lawyer, foreign firm or foreign lawyer corporation. [Ord. No. 94 of 1997]

74C. Students already enrolled in legal studies in the United Kingdom

Notwithstanding the repeal and replacement of section 27 by section 7 of the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000) ("the amending Ordinance"), where a person, on the day the amending Ordinance is published in the Gazette, is enrolled or registered in, or has been offered a place —

- (a) in a course of studies in the United Kingdom that, on completion, will qualify him for a vocational course leading to admission as a barrister in the United Kingdom;
- (b) in the Bar Vocational Course in the United Kingdom; or
- (c) in an external course of studies in Hong Kong offered by an institution in the United Kingdom that, on completion, will qualify him for a vocational course leading to admission as a barrister in the United Kingdom,

the person may, instead of complying with the requirements established under section 27 for admission as a barrister, elect to be admitted under section 27 as that section existed before its repeal by the amending Ordinance, provided he —

- (i) has been called to the Bar in England or Northern Ireland or admitted as an advocate in Scotland;
- (ii) qualifies for admission under the other criteria established under the repealed section 27(1)(b), (c) and (e) and (1A); and
- (iii) applies for admission not later than 31 December 2004.

74D. Lawyers employed in Department of Justice

- (1) Notwithstanding the repeal of section 27A by section 8 of the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000) ("the amending Ordinance"), where a person, on or before the date appointed by the Secretary for Justice by notice in the Gazette for the coming into operation of section 8(2) of the amending Ordinance, meets the requirements in section 27A (1)(a) to (d), as that section existed before its repeal, the Court may at any time admit such person as a barrister of the High Court of Hong Kong in accordance with the said section 27A(1).

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- (2) The Court shall not admit as a barrister, under subsection (1), more than 4 persons in any period of 12 months.
- (3) For the avoidance of doubt, section 27A (1)(e) and (3) does not apply to admission as a barrister under this section.

75. Saving

- (1) Nothing in this Ordinance shall -
 - (a) prejudice or affect any rights or privileges of any legal officer within the meaning of section 2 of the Legal Officers Ordinance (Cap. 87), any person holding an appointment under section 3(1) of the Legal Aid Ordinance (Cap. 91) or any person deemed to be a legal officer for the purpose of the Legal Officers Ordinance (Cap. 87) by virtue of section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) or section 75(3) of the Bankruptcy Ordinance (Cap. 6) or require any such person or any clerk, trainee solicitor or officer appointed to act for him to be admitted in any case where it would not have been necessary for him to be admitted if this Ordinance had not been enacted; or
 - (b) affect any enactment empowering any person, whether or not a solicitor or a barrister, to conduct, convene or otherwise act in relation to any legal proceedings.
- (2) (Omitted as spent)

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SCHEDULE 1

[ss.3 & 27A]

Repealed

SCHEDULE 2

[ss. 26A, 26B, 26C & 26D]

MONEY

1. (1) The Court of First Instance, on the application of the Council, may order that no payment shall be made without the leave of the court by any person (whether or not named in the order) of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the ~~solicitor or his firm or the foreign lawyer or his firm~~ ***legal practice entity concerned. [Ord. No. 94 of 1997]***
- (2) No order under this section shall take effect in relation to any person to whom it applies unless the Council has served a copy of the order on him (whether or not he is named in it) and, in the case of a bank or other financial institution, has indicated at which of its branches the Council believes that the money to which the order relates is held.
- (3) A person shall not be treated as having disobeyed an order under this section by making a payment of money if he satisfies the Court that he exercised due diligence to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it.
- (4) This section does not apply where the powers conferred by this Schedule are exercisable by virtue of section 26C of this Ordinance.
2. (1) Without prejudice to section 1 if the Council passes a resolution to the effect that any sums of money to which this section applies, and the right to recover or receive them, shall vest in the Council, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Council on trust to exercise in relation to them the powers conferred by this Schedule and subject thereto upon trust for the persons beneficially entitled to them.
- (2) This section applies -
 - (a) ~~where the powers conferred by this section are exercisable by virtue of section 26A of this Ordinance, to all sums of money held by or on behalf of the solicitor or his firm or the foreign lawyer or his firm in connection with his practice or with any trust of which he is or formerly was a trustee;~~
 - (a) where the powers conferred by this section are exercisable because of section 26A of this Ordinance, to all sums of money held by or on behalf of the legal practice entity concerned either in connection with the entity's practice or with any trust of which the entity is or formerly was a trustee; and [Ord. No. 94 of 1997]***

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- (b) where they are exercisable by virtue of section 26B of this Ordinance, to all sums of money in any client account; and
 - (c) where they are exercisable by virtue of section 26C of this Ordinance, to all sums of money held by or on behalf of the ~~solicitor or his firm or the foreign lawyer or his firm~~ **legal practice entity** in connection with the trust or other matter to which the complaint relates. **[Ord. No. 94 of 1997]**
- (3) Except where section 4 applies, the Council shall serve on the ~~solicitor or his firm or the foreign lawyer or his firm~~ **legal practice entity** and on any other person having possession of sums of money to which this section applies a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money. **[Ord. No. 94 of 1997]**
- (4) Within 8 days of the service of a notice under subsection (3), the person on whom it was served, on giving not less than 48 hours' notice in writing to the Council and (if the notice under subsection (3) gives the name of the ~~solicitor instructed by the Council~~) to that ~~solicitor~~ **solicitor or solicitor corporation instructed by the Council** to that ~~solicitor or corporation~~, may apply to the Court of First Instance for an order directing the Council to withdraw the notice. **[Ord. No. 94 of 1997]**
- (5) If the Court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit.
- (6) If any person on whom a notice has been served under subsection (3) pays out sums of money at a time when such payment is prohibited by the notice -
- (a) he shall be guilty of an offence and liable on summary conviction to a fine of \$50,000; and
 - (b) the Court of First Instance may, on the application of the Council, order that person to comply with the requirements of the notice within such time as may be specified in the order.
3. Without prejudice to sections 1 and 2, if the Court of First Instance is satisfied, on an application by the Council, that there is reason to suspect that any person holds money on behalf of the ~~solicitor or his firm or the foreign lawyer or his firm~~ **legal practice entity**, the Court may require that person to give the Council information as to any such money and the accounts in which it is held.
4. On the death of a solicitor or foreign lawyer who immediately before his death was practising as a solicitor in his own name or as a sole solicitor or foreign lawyer under a firm name, the right to operate on or otherwise deal with any banking account in the name of the solicitor or his firm or the foreign lawyer or his firm, being an account in the title of which the word "client" appears, shall, notwithstanding anything in this Ordinance or otherwise to the contrary, vest in the Council to the exclusion of any personal representatives of such solicitor or foreign lawyer and shall be exercisable as from the death of the solicitor or foreign lawyer.

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5. ~~Subject to the service of any notice under section 2(3), and to any application that may be made under section 2(4), the Council or any person in that behalf appointed by the Council may withdraw the moneys, or from time to time any part of the moneys, in any banking account in the name of the solicitor or his firm or the foreign lawyer or his firm, and any moneys in the office of the solicitor or his firm or the foreign lawyer or his firm due to or held on behalf of his clients; and pay them into a special account or special accounts in the name of the Council or such person appointed as aforesaid and may operate on, and otherwise deal with, such special account or accounts as the solicitor or his firm or the foreign lawyer or his firm might have operated on, or otherwise dealt with, that banking account:~~

~~Provided that a banker with whom such special account or accounts is or are kept shall be under no obligation to ascertain whether that account or those accounts is or are being so operated on or otherwise dealt with.~~

5. **(1) The Council, or a person appointed by the Council for the purpose, may**

(a) withdraw money held in any banking account kept in the name of the legal practice entity and any money held at the office of the entity on behalf of the entity's clients; and

(b) establish one or more special account in the name of the Council or the person so appointed and pay the money into the account or accounts.

(2) Subsection (1) is subject to any notice that may be served under section 2(3) and to any application that may be made under section 2(4).

(3) The Council or person appointed may operate a special account established under this section in the same way as the legal practice entity concerned might have operated any of its banking accounts.

(4) A banker is under no obligation to find out whether an account established with the banker under this section is being operated as provided by subsection (3). [Ord. No. 94 of 1997]

6. In any case where the Council is unable to ascertain the person to whom any moneys referred to in a notice served under section 2(3) belong or where the Council otherwise thinks it expedient so to do, the Council may apply to the Court of First Instance for directions as to the transfer of such moneys.

DOCUMENTS

7. (1) ~~The Council may give notice to the solicitor or his firm or the foreign lawyer or his firm~~ **legal practice entity** requiring the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council -

(a) where the powers conferred by this Schedule are exercisable by virtue of section

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26A of this Ordinance, of all documents in the possession of the ~~solicitor or his firm or the foreign lawyer or his firm~~ **entity** in connection with his practice or with any controlled trust; and

- (b) where they are exercisable by virtue of section 26C of this Ordinance, of all documents in the possession of the ~~solicitor or his firm or the foreign lawyer or his firm~~ **entity** in connection with the trust or other matters to which the complaint relates (whether or not they relate also to other matters). **[Ord. No. 94 of 1997]**
- (2) The person appointed by the Council may take possession of any such documents on behalf of the Council.
- (3) Except in a case where an application has been made to the Court of First Instance under subsection (4), if any person having possession of any such documents refuses, neglects or otherwise fails to comply with a requirement under subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine of \$50,000.
- (4) The Court of First Instance, on an application of the Council, may order a person required to produce or deliver documents under subsection (1) to produce or deliver them to any person appointed by the Council at such time and place as may be specified in the order, and authorize him to take possession of them on behalf of the Council.
- (5) If on an application by the Council the Court of First Instance is satisfied that there is reason to suspect that documents in relation to which the powers conferred by subsection (1) are exercisable have come into the possession of some person other than the ~~solicitor or his firm or the foreign lawyer or his firm~~ **entity**, the Court may order that person to produce or deliver the documents to any person appointed by the Council at such time and place as may be specified in the order and authorise him to take possession of them on behalf of the Council. **[Ord. No. 94 of 1997]**
- (6) On making an order under this section, or at any later time, the Court, on the application of the Council, may authorise a person appointed by the Council to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which the order relates.
- (7) Upon taking possession of any such documents, the Council shall serve ~~upon the solicitor or foreign lawyer~~ **on the legal practice entity** and every person from whom those documents were received, or from whose premises they were taken by virtue of an order made under this section, a notice giving particulars and the date of taking possession thereof.
- (8) Subject to subsection (9), a person upon whom a notice under subsection (7) is served, on giving not less than 48 hours' notice to the Council and (if the notice under subsection (7) gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the Court of First Instance for an order directing the Council to deliver the documents to such person as the applicant may require.

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- (9) A notice under subsection (8) shall be given within 8 days of the service of the Council's notice under subsection (7).
- (10) If no application is made under subsection (8), or if the judge to whom any such application is made directs that the documents shall remain in the custody or control of the Council, the Council may make inquiries to ascertain the person to whom those documents belong and may deal with those documents in accordance with the directions of that person:
- Provided that, before dealing with such documents, the Council may take copies of, or extracts from, any such documents.
- (11) Without prejudice to the provisions of Part IIA of this Ordinance and this Schedule, the Council may apply to the Court of First Instance for an order as to the disposal or destruction of any documents in its possession by virtue of this section or section 8.
- (12) On an application under subsection (8) or (11), the Court may make such order as it thinks fit.
- (13) Except so far as its right to do so may be restricted by an order on an application under subsection (8) or (11), the Council may take copies of or extracts from any documents in its possession by virtue of this section or section (8) and require any person to whom it is proposed that such documents shall be delivered, as a condition precedent to delivery, to give a reasonable undertaking to supply copies or extracts to the Council.

MAIL

8. (1) The Court of First Instance, on the application of the Council, may from time to time order that for such time not exceeding 18 months as the Court thinks fit postal packets (as defined in section 2 of the Post Office Ordinance (Cap. 98)) addressed to the ~~solicitor or his firm or the foreign lawyer or his firm~~ **legal practice entity** at any place or places mentioned in the order shall be directed to the Council or any person appointed by the Council at any other address therein mentioned; and the Council, or that person on its behalf, may take possession of any such packets received at that address. **[Ord. No. 94 of 1997]**
- (2) Where such an order is made the Council shall pay to the Postmaster General the like charges (if any), as would have been payable for the redirection of the packets by virtue of any scheme made under regulation 32 of the Post Office Regulations (Cap. 98 sub. leg. A), if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Postmaster General to redirect them to him at the address mentioned in the order.
- (3) This section does not apply where the powers conferred by this Schedule are exercisable by virtue of section 26C of this Ordinance.

***Proposed amendments to the Legal Practitioners Ordinance
based on DoJ's letter of 7 March 2012, the minutes of the meeting of
the Working Party on Solicitor Corporation Rules on 14 May 2012,
the Statute Law (Miscellaneous Provisions) Ordinance 2012 and
the Statute Law (Miscellaneous Provisions) Ordinance 2014***

Legal Practitioners Ordinance

GENERAL

9. The powers in relation to sums of money and documents conferred by this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.
10. Subject to any order for the payment of costs that may be made on an application to the Court under this Schedule, any costs incurred by the Council for the purposes of this Schedule, including, without prejudice to the generality of this section, the costs of any person exercising powers under this Schedule on behalf of the Council, ~~shall be paid by the solicitor or foreign lawyer or his personal representatives and shall be recoverable from him or them~~ ***are to be paid by the legal practice entity or, where the entity is a natural person who has died, by the entity's personal representatives and are recoverable from the entity or personal representatives*** as a debt owing to the Council. ***[Ord. No. 94 of 1997]***
11. ~~Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.~~ ***Repealed [Ord. No. 94 of 1997]***
12. Any application to the Court of First Instance under this Schedule may be disposed of in chambers.
13. The Council may do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers under this Schedule.
14. Any requirement of notice under this Schedule shall be made in writing under the hand of such person as may be appointed by the Council for the purpose and may be served on any person either by personal service or by being sent by registered post addressed to his last known place of business or residence.

#140143 v1 (12/01/2011)
#757882 (24/04/2012)
#842868 (15/05/2012)
#858195 (28/05/2012)
#1306041 (06/06/2013)
#1759260 (24/04/2014)

Solicitor Corporation Rules

DRAFTING HISTORY TABLE

Draft no.	Release date	Doc. no. & version
1st draft	17.01.2005	#106505v5
2nd draft	24.03.2005	#106505v7
3rd draft	02.08.2005	#106505v8
4th draft	23.09.2005	#106505v9
5th draft	15.09.2009	#161716v1
6th draft	23.11.2010	#172183v2
7 th draft	15.12.2010	#172183v3
8 th draft	05.01.2011	#172183v4
9 th draft	14.07.2011	#172183v5
9 th draft (revised0	11.08.2011	#186206v1
10 th draft	01.11.2011	#186206v2
11 th draft	<u>26.3.2012</u>	<u>#186206v3</u>

Solicitor Corporation Rules

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Solicitor Corporation Rules

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

Part 1

Preliminary

1. **Commencement**

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

2. **Interpretation**

In these Rules—

company (公司) means a company formed and registered under the Companies Ordinance (Cap. 32);

firm (律師行) 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;

qualified company (合資格公司)—see section 6;

shares (股份) has the same meaning as in the Companies Ordinance (Cap. 32).

3. Effect of these Rules

These Rules do not affect the application to a solicitor of any laws, enactments, practice directions and codes of conduct relating to the practice of a solicitor.

Part 2

Approval as Solicitor Corporation

4. Application for approval of company or proposed company as solicitor corporation

An application under section 7C of the Ordinance for approval of a company or proposed company as a solicitor corporation must—

- (a) be made in a form approved by the Society; and
- (b) be accompanied by an application fee of \$5,000.

5. Provisions relating to approvals

- (1) The Society must not approve an application under section 7C of the Ordinance unless the Council is satisfied that—
 - (a) the company is, or the proposed company will on its formation and registration as a company become, a qualified company;
 - (b) the name of the company or proposed company complies with section 12; and
 - (c) giving of the approval is not, ~~in the opinion of the Council,~~ contrary to the interests of the public.
- (2) The Society must withdraw the approval of a company or a proposed company as a solicitor corporation may be withdrawn by the Society at any time if the Council is satisfied that—
 - (a) the company ceases, or the proposed company will on its formation and registration as a company cease, to be a qualified company; or
 - (b) the continuance of the approval is, ~~in the opinion of the Council,~~ contrary to the interests of the public.
- (3) The approval of a company as a solicitor corporation ceases to have effect if—

- (a) an order for winding up of the company is made;
- (b) a resolution for voluntary winding up of the company is passed; or
- (c) a person is appointed as receiver or manager of the property of the company.

6. Meaning of qualified company

- (1) For the purposes of these Rules, a company is a qualified company if—
 - (a) the company satisfies all the requirements specified in subsection (2); or
 - (b) to the extent that the company does not satisfy any requirement specified in subsection (2)(a), (b), (c) or (d), the Council has granted a waiver in respect of the requirement.
 - (2) The requirements referred to in subsection (1) are—
 - (a) all the members of the company are directors or employees of the company;
 - (b) all the directors of the company are members or employees of the company;
 - (c) every member or director of the company is a solicitor holding a current practising certificate which is not subject to the condition imposed under section 6(6) of the Ordinance;
 - (d) every member of the company beneficially owns the share or shares that the member holds in the company; and
 - (e) the memorandum and articles of association of the company comply with these Rules and the Companies Ordinance (Cap. 32).
-

Part 3

Conduct of Solicitor Corporation and its Members, etc.

7. Conduct of solicitor corporation

- (1) A solicitor corporation must not engage in any activity that does not form part of, or is not incidental to, the business of practising as a solicitor or as solicitors.
- (2) A solicitor corporation must at all times be managed and controlled by a solicitor or solicitors.
- (3) A solicitor corporation must not conduct its business in any name other than that approved under these Rules.
- (4) Within 14 days after delivering any document to the Registrar of Companies in purported compliance with the Companies Ordinance (Cap. 32), a solicitor corporation must provide the Society with a copy of the document.

8. Conduct of member and employee

- (1) A member of a solicitor corporation must not create any charge or other third party interest over any share in the corporation.
- (2) For the purpose of attending and voting at any meeting of a solicitor corporation, a member of the corporation must not appoint as a proxy any person other than a solicitor who is a member or employee of the corporation.
- (3) A member of a solicitor corporation, or an employee of a solicitor corporation who is a solicitor (whether the member or employee holds a current practising certificate or not), must not without the prior written consent of the Council—
 - (a) hold in any capacity (including that of trustee), or beneficially own any interest in, any share in any other solicitor corporation;

-
- (b) be or act as an officer, 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 the member's or employee's own account.
-

Part 4

Death, Bankruptcy, etc. of Member

9. Death of member

If a member of a solicitor corporation dies, the corporation must ensure that any share in the corporation registered in the member's name at the time of the member's death is, within 24 months of the member's death—

- (a) registered in the name of a solicitor who satisfies the requirement specified in section 6(2)(c); or
- (b) ~~are~~ repurchased by the corporation itself in accordance with the Companies Ordinance (Cap. 32).

10. Member's name struck off roll of solicitors, member becoming bankrupt, etc.

(1) If—

- (a) the name of a member of a solicitor corporation is removed from or struck off the roll of solicitors;
- (b) a member of a solicitor corporation becomes bankrupt;
or
- (c) a member of a solicitor corporation is suspended from practice by an order of a Solicitors Disciplinary Tribunal,

any share in the corporation registered in the member's name may, despite section 6(2)(c), remain so registered for not longer than 6 months.

- (2) During those 6 months, the member must not exercise any voting rights in respect of the share at any meeting of the corporation.
-

Solicitor Corporation Rules

Part 4

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(3) The articles of association of a solicitor corporation must provide for the restriction on exercise of voting rights by a member under subsection (2).

Part 5

Memorandum and Articles of Association and Name of Solicitor Corporation

- 11. Provisions relating to memorandum and articles of association**
- (1) The memorandum of association of a solicitor corporation must provide that the corporation may only ~~carry out~~ engage in activities that form part of, or are incidental to, the business of practising as a solicitor or as solicitors.
 - (2) An application under section 7E of the Ordinance for approval of an amendment to the memorandum or articles of association of a solicitor corporation must—
 - (a) be made in a form approved by the Society; and
 - (b) be accompanied by an application fee of \$2,500.
 - (3) The Society must not approve an application ~~under~~ referred to in subsection (2) if the amendment will render the memorandum or articles of association in contravention of [these Rules and] the Companies Ordinance (Cap. 32).
- 12. Provisions relating to names**
- (1) In this section—

name (名稱) means includes part of a name or the initials of a name.
 - (2) The name of a solicitor corporation must—
 - (a) except with the approval of the Council, consist solely of the name or names of one or more solicitors who are members of the corporation;
 - (b) if the name is in Chinese, contain “有限公司” as its last 4 characters;
 - (c) if the name is in English, contain “Limited” as its last word; and

- (d) if the name is both in Chinese and English, contain “有限公司” as its last 4 characters of the name in Chinese, and “Limited” as its last word of the name in English.
- (3) Subsection (2) does not preclude the use of—
- (a) the name of any former member of the solicitor corporation;
 - (b) the name of any predecessor firm of the solicitor corporation; or
 - (c) the title “solicitor”, “notary public”, “trade-mark agent”, “patent agent”, “律師”, “公證人”, “商標代理人” or “專利代理人”.
- (4) For the purposes of subsection (3), a firm is a predecessor firm of a solicitor corporation if—
- (a) the firm ceases to be in practice at the time when the approval given in respect of the corporation under section 7C of the Ordinance takes effect; and
 - (b) the membership of the corporation includes not less than one-third of the principals of the firm immediately before that time.
- (5) An application under section 7E of the Ordinance for approval of a change of the name of a solicitor corporation must—
- (a) be made in a form approved by the Society; and
 - (b) be accompanied by an application fee of \$2,500.
- (6) The Society must not approve an application referred to in subsection (5) or section 4 if the name or proposed name of the solicitor corporation to which the application relates—
- (a) does not comply with subsection (2);
 - (b) is the same as the name of another solicitor corporation or is, in the opinion of the Council, so similar to the name of another solicitor corporation as to be likely to cause confusion to the public;

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- (c) is the same as the name of a firm or is, in the opinion of the Council, so similar to the name of a firm as to be likely to cause confusion to the public; or
- (d) is, in the opinion of the Council, offensive or otherwise contrary to the interests of the public.

Approved this day of 2011.

Chief Justice

Made this day of 2011.

Explanatory Note

The purpose of these Rules is to enable solicitors to incorporate their practices and to establish a regulatory framework under which they may do so.



THE
LAW SOCIETY
OF HONG KONG
香港律師會

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2 September 2013

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Clerk to Panel
Panel on Administration
of Justice and Legal Services
Legislative Council
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By E-mail
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Dear Sir,

Solicitor Corporation Rules and consequential amendments

The Law Society ("Society") has sought the approval of the Chief Justice on the Solicitor Corporation Rules ("Rules") and consequential amendments to the Legal Practitioners Ordinance Cap. 159.

I enclose copy of a letter from the Chief Justice granting his approval in principle to the Rules and consequential amendments.

The Chief Justice has asked the Society to consult the Panel on Administration of Justice and Legal Services of the Legislative Council ("Panel") on 2 issues relating to solicitor corporations, namely, whether solicitor corporations should be required to take out top-up professional indemnity insurance and notify clients of the identity of the supervising partners.

The Society's Working Party on Solicitor Corporation Rules ("Working Party") has considered these 2 issues and the position of the Working Party is as follows:

1. On the requirement for solicitor corporations to notify clients of the identity of the overall supervising partners, Commentary 1 to Principle 5.17 of the Hong Kong Solicitors' Guide to Professional Conduct ("Guide") already prescribes that a client should be told the name and status of the person responsible for the conduct of the matter on a day-to-day basis and the partner responsible for the overall supervision of the matter. Solicitors in solicitor corporations are bound by the Guide. Principle 5.17 and the Commentaries are enclosed.

同心展關懷

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香港社會服務聯會

Incorporated in 1907 as a company limited by guarantee



The Law Society of Hong Kong

2. On the question of top-up professional indemnity insurance, the Society submits that public protection is already sufficient. It is true that the solicitor corporation with which the client has a retainer will have limited liability in contract and in tort and the claims against the corporation for breach of contract or tort would be limited to the paid up capital of the corporation. Nevertheless, any professional negligence action instituted against the solicitor corporation would in all likelihood be made against the director/solicitor handling the matter as well and his employees for whom he is vicariously liable. Such action will thus be covered by the Professional Indemnity Scheme ("PIS") of the Society.
3. There is no statistical evidence that the present limit of indemnity of HK\$10m under the PIS is inadequate. I enclose a summary of the claims history of PIS. The Society would highlight the following:
 - (i) The claims history shows that in the past 7 indemnity years (1995/6 to 2011/2 indemnity years) including the year 1997 where the property market in the Hong Kong Special Administrative Region was severely hit by economic downturn, only 61 claimants out of the total 3,648 claims (1.67%) have sought claims of HK\$10m or more and only 16 claims (0.44%) had a payout of HK\$10m.
 - (ii) Out of the 61 claims, only 5 were made by individuals for which the Fund paid HK\$10m (including defence costs but less the indemnified's deductible).
 - (iii) In the majority of the claims (3,587 out of 3,648 claims), the claimants have made a professional negligence claim against the law firms for an amount under HK\$10m.
 - (iv) The Society has also commissioned actuaries to conduct actuarial projections on future claims against the Solicitors Indemnity Fund ("Fund") and such projections show that the Fund has adequate reserves to cover PIS claims in different economic scenarios including an economic downturn where the reinsurers of PIS fail and the Fund has to rely on its own reserves to meet claims. In the light of the projections, the Council has resolved to reduce the contributions payable in the coming indemnity year.
 - (v) As the PIS is a mandatory scheme, only the minimum level of indemnity should be prescribed in accordance with the value and the amount of claims, leaving those whose practice as solicitors or whose clients' expectations exceed the minimum the freedom of choice to purchase higher cover at their own costs, otherwise, any increase in the statutory indemnity limit of HK\$10 million per claim will inevitably lead to an increase in contributions payable by law firms i.e. insurance premium. The extra cost will in turn be passed onto the consumers who will have to pay more to get higher indemnity cover which is unnecessary based on the claims statistics.

The Law Society of Hong Kong

4. I enclose the Background brief prepared by the Legislative Council Secretariat, LC Paper No. CB(2) 247/04-05(01) and Appendix VI to that Paper. The Working Party takes the view that the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 was passed without the Legislative Council and the Administration imposing a requirement for solicitor corporations to purchase top-up indemnity insurance and since the Department of Justice had confirmed in the past there was no further policy issue to be raised, the Working Party considers it would be inappropriate to raise this issue for discussion at such a late stage which would generate no substantive gain for the public interest other than to protract the legislative amendments process.

I should be grateful if you could put this letter before the Panel for its consideration.

Yours sincerely,



Vivien Lee
Director of Standards & Development

Encls.

立法會
Legislative Council

LC Paper No. CB(2)247/04-05(01)

Ref: CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Background brief prepared by Legislative Council Secretariat

Solicitor Corporations Rules

Purpose

This paper highlights the past discussions of the Panel on Administration of Justice and Legal Services (AJLS Panel) on the progress of implementation of the recommendation on the incorporation of solicitors' practices in the last legislative term.

Background

2. In 1995, the then Attorney General's Chambers published a Consultation Paper on Legal Services which made a number of proposals regarding legal services of Hong Kong. One proposal was to allow solicitors to incorporate their practices as companies. An incorporated company is in law a separate legal entity, distinct from its members. Shareholders of a company with limited liability are only liable to the extent of the unpaid nominal capital of the shares which they own. The view expressed in the Consultation Paper was that, subject to proper safeguards, solicitors should be permitted to incorporate their practices with either limited or unlimited liability.

3. Clause 2 of the Legal Services Legislation (Miscellaneous Amendments) Bill 1996, which was enacted in June 1997, sought to add new provisions to the Legal Practitioners Ordinance (Cap. 159) to enable solicitors to incorporate their practices as solicitor corporations. These included amendments to sections 73 and 73A of the Legal Practitioners Ordinance to provide that the Council of the Law Society might make rules in respect of the establishment of solicitor corporations and fees payable to the Law Society for applications for registration as a solicitor corporation, as well as professional indemnity cover of solicitor corporations. The new provisions should take effect on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

4. The AJLS Panel held three meetings, on 19 December 2000, 27 May 2002 and 24 November 2003 respectively, to discuss the progress of implementation of the recommendation on the incorporation of solicitors' practices including the drafting of the Solicitor Corporations Rules (the draft Rules). At the Panel meeting on 24 November 2003, the Law Society briefed the Panel on specific provisions of the draft Rules, the Solicitor Corporations (Fees) Rules and the proposed consequential amendments to the Solicitors (Professional Indemnity) Rules.

Major issues discussed by the Panel

Preparation of the draft Rules

5. In answer to members' enquiries, the Law Society informed the Panel that in preparing the draft Rules, the Society had undertaken research on issues relating to incorporation of solicitors' practices in some overseas common law jurisdictions. The Society pointed out that consideration of the issues involved detailed discussion on the way in which solicitor corporations would conform to existing practice rules, including those relating to the Solicitors Professional Indemnity Scheme, compliance with rules of conduct as well as other regulatory matters. The ultimate objective was to ensure that proper safeguards would be provided to users of legal services, while allowing solicitors greater flexibility in the manner in which they ran their practice.

6. The Law Society further informed the Panel that it would continue to study whether limited liability partnerships for legal practice (i.e. partnership of solicitors as a legal entity of limited liability under certain circumstances), which were a new development in England and Wales, would be a better alternative than solicitor corporations for Hong Kong.

Top-up insurance

7. At the Panel meeting on 27 May 2002, the Administration informed members that it had studied the draft Rules issued by the Law Society in June 2001 for comments by its members and the Administration. The Administration considered that the major outstanding issue of concern was in relation to insurance of solicitor corporations for the protection of consumers.

8. The Administration had noted that there was no provision in the draft Rules requiring a solicitor corporation to have insurance coverage before it could be approved as a solicitor corporation. The Administration considered it essential that, for the protection of consumers, adequate indemnity insurance should be taken out by solicitor corporations to cover civil claims made by their clients. The Administration suggested that the Law Society should consider whether the existing minimum coverage taken out by a solicitors firm was sufficient for solicitor corporations.

9. The Law Society informed the Panel that legislative amendments would be made to include solicitor corporations in the definition of "indemnified" under the Solicitors (Professional Indemnity) Rules. In its view, the cover provided by the existing Solicitors Professional Indemnity Scheme was sufficient protection for the public. Also, in addition to the mandatory \$10 million insurance coverage for each and every claim made by clients, it was not uncommon for some larger solicitors firms to take out additional indemnity insurance.

10. A member of the Panel expressed the view that the requirement of top-up insurance would defeat the legislative intent of incorporation of solicitors firms. The member pointed out that the reason why incorporation of solicitors was contemplated was that the present system was considered to be too onerous on solicitors firms as solicitors had to pay from their own private means, if necessary, for the faults of their partners even though they had nothing to do with the negligent act.

11. The Administration had reviewed its position and advised the Panel in November 2003 that it would not insist on the requirement of top-up insurance for solicitor corporations at the present stage. Whether the need for top-up insurance should be further assessed would depend on the outcome of the Law Society's review on the existing Professional Indemnity Scheme and the practical operation of the Solicitor Corporations Rules.

12. The Law Society also explained that amendments would be made to the Solicitors (Professional Indemnity) Rules, which would put the solicitors and their staff working in a solicitor corporation in the same position as though they were practicing through the existing form of sole proprietorship or partnership. Any claims against a solicitor corporation would proceed against the Solicitors Indemnity Fund in the normal way.

Requirement in relation to member and director of a solicitor corporation

13. Under rule 3(1)(d)(i) of the draft Solicitor Corporations Rules, every member and every director of a solicitor corporation must be an individual who was a solicitor holding a current practicing certificate which was not subject to any condition other than the condition that he should comply with the Continuing Professional Development Rules and any other continuing legal education rules made under section 73 of the Legal Practitioners Ordinance. The Law Society pointed out that with the coming into force of the Practising Certificate (Special Conditions) Rules, which enabled the Society to impose conditions on the practicing certificate of a solicitor, concern had been raised as to whether the conditions imposed by the Law Society would bar the solicitor from becoming a member or director of a solicitor corporation. The Law Society advised that its Council would further consider the matter and would introduce relevant amendment to the draft Rules, if necessary.

14. The Law Society also pointed out that rule 3(2) of the draft Rules required that a solicitor corporation established by a sole practitioner must have a second member.

A member of the Panel had suggested to the Law Society that it should review the drafting of rule 3(2) in the light of the relevant statutory requirements under the Companies Ordinance to achieve consistency.

Legislative timetable

15. The Law Society informed the Panel at the meeting on 24 November 2003 that it had sought the views of its members on the draft Rules. Its members would be consulted again if the Law Society Council considered that further amendments to the draft Rules were necessary. The finalised Rules would then be submitted to the Chief Justice for approval and gazetted. The Law Society expected that this could be done by early 2004.

Relevant papers

16. The following papers are attached for members' reference -

- (a) paper provided by the Law Society for the Panel meeting on 19 December 2000 (Appendix I);
- (b) paper provided by the Administration for the Panel meeting on 27 May 2002 (Appendix II);
- (c) paper provided by the Law Society for the Panel meeting on 24 November 2003 enclosing the draft Solicitor Corporations Rules, Solicitor Corporations (Fees) Rules, and the proposed consequential amendments to the Solicitors (Professional Indemnity) Rules (Appendix III);
- (d) extract from minutes of the Panel meeting on 19 December 2000 (Appendix IV);
- (e) extract from minutes of the Panel meeting on 27 May 2002 (Appendix V); and
- (f) extract from minutes of the Panel meeting on 24 November 2003 (Appendix VI).

Council Business Division 2
Legislative Council Secretariat
18 November 2004

Extract from minutes of meeting of Administration of Justice
and Legal Services Panel held on 24 November 2003

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V. **Solicitor Corporations**

(LC Paper Nos. CB(2)390/03-04(04) - (06); 394/03-04(01))

Submission from The Law Society of Hong Kong

59. Mr Patrick MOSS introduced the paper provided by The Law Society of Hong Kong which enclosed a copy of the Solicitor Corporations Rules, Solicitor Corporations (Fees) Rules and Amendment to the Solicitors (Professional Indemnity) Rules (LC Paper No. CB(2)394/03-04(01)). In the main, the paper explained that the Legal Practitioners Ordinance (Cap. 159) was amended by the Legal Services Legislation (Miscellaneous Amendments) Ordinance in 1997 to enable solicitors to incorporate their practices as solicitor corporations. The amendments required the Council of the Law Society to make rules in respect of the establishment of solicitor corporations and fees payable to the Law Society for applications for registration as a solicitor corporation, as well as professional indemnity cover of solicitor corporations. The amendments, which were contained in Part II AA of Cap. 159, should take effect on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

60. Mr MOSS took members through the Solicitor Corporations Rules (the Rules) attached at Annex A to the Law Society's paper clause by clause.

61. Mr MOSS remarked that there had been misunderstanding as to the effect of incorporation of solicitors' practices in relation to the level of liabilities of members of such corporations arising from actions in tort. He clarified that under the general law of agency, a director as agent of a company who undertook work negligently for the company might be liable even though the tort itself was committed by the company. In the context of a solicitor corporation, a solicitor director who had direct contact with the corporation's clients and who acted negligently towards his clients might be personally liable in tort to the client, notwithstanding that the client had entered into a contract with the solicitor corporation. Regarding professional indemnity cover, the proposed amendments to the Solicitors (Professional Indemnity) Rules would in effect put the solicitors and their staff working within a solicitor corporation in the same position as though they were practising through the existing forms of sole proprietorship or partnership, and any claims against the corporation would proceed against the Professional Indemnity Fund in the normal way.

62. Mr MOSS referred members to rule 3(1)(d)(i) of the Rules, which specified that subject to subrule (2), every member and every director of a solicitor corporation must be an individual who was a solicitor holding a current practising certificate which was not subject to any condition other than the condition that he should comply with the Continuing Professional Development Rules and any other continuing legal education rules made under section 73 of Cap. 159. He said that with the coming into force of the Practising Certificate (Special Conditions) Rules, which enabled the Law Society to impose conditions on the practising certificate of a solicitor, concern had been raised as to whether the conditions imposed would bar the solicitor from becoming a member or director of a solicitor corporation. He informed members that the issue would be considered at a meeting of the Council of the Law Society on 25 November 2003. Subject to a resolution made by the Council on the matter, an amendment would be made to rule 3(1)(d)(i), if necessary.

63. Regarding the proposed consequential amendments to the Solicitors (Professional Indemnity) Rules (Annex C to the Law Society's paper), Mr MOSS informed members that CJ had approved the amendments to Rule 6 of Schedule 3 to the Rules but had not yet approved the amendments to Rule 2.

Views of the Administration

64. Senior Government Counsel (Legal Policy Division) briefed members on the Administration's letter dated 17 November 2003 to the Panel (LC Paper No. CB(2)390/03-04(06)). She informed members that the Administration considered that the only outstanding issue regarding solicitor corporations was whether it was necessary for solicitor corporations to take out top-up insurance. In this connection, the Administration had agreed not to insist on a requirement for top-up insurance at this stage, after considering the circumstances put forward by the Law Society. The Administration also considered that whether the issue of top-up insurance should be further assessed would depend on the outcome of the Law Society's review on its existing professional indemnity scheme and the practical operation of the Solicitor Corporations Rules.

Issues raised by members

65. Referring to the condition in rule 3(2) of the Rules that a solicitor corporation established by a sole practitioner must have a second member in order to comply with the requirements of the Companies Ordinance, Ms Audrey EU asked whether the subrule was still required in the light of the amendments recently made to the Companies Ordinance. Mr Patrick MOSS responded that he was unaware that the amendments had been brought into effect. His personal view was that even if the amendment was passed, the safeguard in rule 3(2) might still be necessary. Ms Audrey EU pointed out that the reference to the Companies Ordinance might not be necessary. Mr MOSS agreed to follow up the issue raised.

66. Ms Audrey EU asked whether the proposed Rules on solicitor corporations had any precedents elsewhere and whether the formation of solicitor corporations would become the norm for legal practice after the Rules were passed.

67. Mr Patrick MOSS advised that there was similar legislation in some jurisdictions including Singapore. He added that he doubted many practitioners would actually incorporate their practice by establishing solicitor corporations, which, in his opinion, though suited the needs of some, were not a particularly effective way of running a legal practice. He further said that some people had supported the formation of solicitor corporations on the misunderstanding that practitioners could limit their liabilities and the problems associated with professional indemnity could be solved. However, this was not the case in reality.

68. The Chairman asked whether the Law Society had consulted its members on the Rules. Mr Patrick MOSS replied that the Law Society had sought views from its members about a year ago and minor amendments had been made to the Rules since then. He said that the members would be consulted again if the Council of the Law Society considered that further amendments were necessary.

69. In response to the Chairman, Mr Patrick MOSS said that the finalised Rules would be submitted to CJ for approval after the Council of the Law Society had resolved the relevant outstanding issues and a Chinese version of the Rules was prepared. The Rules would then be gazetted. He said that it was expected that this could be done by end of 2003/early 2004.

Way forward

70. The Chairman said that it was likely that a subcommittee would be formed to study the Rules in detail after the Rules had been tabled in LegCo. To facilitate future deliberations on the Rules, the Chairman requested the Law Society to provide a paper to explain -

- (a) the differences between legal practice in partnership and in a solicitor corporation after passage of the Rules; and
- (b) the differences between the liability of a legal practitioner in partnership and in a solicitor corporation under the existing Professional Indemnity Scheme of the Law Society.

solicitor to do what his client wants him to do. A solicitor must not breach the principles of professional conduct in order to benefit his client.

5.15 No exploitation

A solicitor must not take advantage of the age, inexperience, want of education or business experience or ill health of his client.

Commentary

By way of example, a solicitor must not induce a client to pay a sum of money on account of costs to be incurred, which is out of all proportion to what could be justified by the work which the solicitor has been instructed to do: see principle 4.12.

5.16 Fiduciary duty

A solicitor owes a fiduciary duty to his client: see Chapter 7.

5.17 Communicate with client

A solicitor is under a duty to keep his client properly informed and to comply with reasonable requests from the client for information concerning his affairs.

Commentary

1. A client should be told the name and the status of the person responsible for the conduct of the matter on a day-to-day basis and the partner responsible for the overall supervision of the matter.
2. If the responsibility for the conduct or the overall supervision of the whole or part of a client's matter is transferred to another person in the firm the client should be informed.
3. A solicitor should advise his client when it is appropriate to instruct a barrister and obtain the client's authority before doing so. Whenever a client is to attend a hearing at which he is to be represented, he should be told the name of the solicitor or barrister who it is intended will represent him.
4. This duty extends to keeping a client informed about recent changes of the law where those changes affect the subject matter of his retainer.

5. The extent and frequency of the information supplied and the degree of consultation will depend on the circumstances and on the type and urgency of the matter and of the experience or otherwise of the client in that type of matter.
6. There may be exceptional circumstances in which a solicitor would be justified in withholding information from a client. See for example, principle 8.03, commentary 4.

5.18 Honest and candid advice

A solicitor must be both honest and candid when advising a client.

Commentary

1. A solicitor's duty to a client who seeks legal advice is to give the client a competent opinion based on sufficient knowledge of the relevant facts, and adequate consideration of the applicable law and the solicitor's own experience and expertise. The advice must be open and undisguised, clearly disclosing what the solicitor honestly thinks about the merits and probable results.
2. A solicitor should explain as well as advise, so that his client is informed of the true position and fairly advised about the real issues or questions involved.
3. A solicitor should clearly indicate the facts, circumstances and assumptions upon which his opinion is based, particularly where the circumstances do not justify an exhaustive investigation with resultant expense to the client. However, unless a client instructs otherwise, a solicitor should investigate the matter in sufficient detail to be able to express an opinion rather than merely make comments with many qualifications.
4. A solicitor should be wary of bold and confident assurances to a client.
5. In addition to advice on legal questions, a solicitor may be asked for or expected to give advice on non-legal matters such as the business, policy or social implications involved in a question, or the course a client should choose. In many instances the solicitor's experience will be such that his views on non-legal matters will be of real benefit to the client. A solicitor who advises on such matters should, where and to the extent necessary, point out his lack of experience or other qualification in the particular field and should clearly distinguish legal advice from such other advice.

**Claims Statistics with respect to Hong Kong Solicitors Professional Indemnity Fund
up to the 2011//2012 Indemnity Year**

Professional indemnity cover

(i) Since the indemnity year 1998/99, the average claim size has ranged from HK\$0.4 million to HK\$2.7 million, well below the statutory indemnity limit of HK\$10 million per claim.

(ii) From the 1995/96 indemnity year to 2011/12 indemnity year (both inclusive), there have been 3,648 claims on the Hong Kong Solicitors Indemnity Fund ("Fund")(including notifications), out of which, only 61 claimants, i.e. 1.67 %, have sought claims of HK\$10 million or more.

(iii) Of these 61 claims:

(a) Payout of HK\$10 million

There are 16 claims (0.44%) in which the Fund paid HK\$10 million (including defence costs but less the indemnified's deductible).

Of these 16 claims, 11 (69%) were brought by companies and 5 (31%) by individuals.

(b) Payout between HK\$8 million and HK\$10 million

There are 19 claims in which the actual or expected payment by the Fund (including defence costs) is or will be more than HK\$8 million but less than HK\$10 million.

Of these 19 claims, 13 (68.42%) were brought by companies and 6 (31.58%) by individuals.

(c) Payout of less than HK\$8 million

There are 21 claims in which the claimants sought HK\$10 million or more, but which were settled for less than HK\$8 million (including defence costs).

Of these 21 claims, 17 (80.95%) were brought by companies and 4 (19.05%) by individuals.

(d) Open claims with payout which may reach HK\$10 million

There are 7 open claims in which it is anticipated that the claim payments (including defence costs) will reach HK\$10 million.

4 of these claims were brought by companies, 2 by individuals, and 1 claim by a company and an individual jointly.

(e) Open claims with payout which may be less than HK\$8 million

There are 2 open claims in which the claimants are seeking HK\$10 million or more but it is anticipated that the claims will settle for less than HK\$8 million (including defence costs).

1 claim was brought by a company and an individual jointly and the other by an individual.

The Law Society of Hong Kong
19 August 2013

Annex 4

Claims Statistics with respect to Hong Kong Solicitors Professional Indemnity Fund up to the 2012//2013 Indemnity Year

Professional indemnity cover

- (i) From the 1995/96 indemnity year to 2012/13 indemnity year (both inclusive), there have been 3,888 claims on the Hong Kong Solicitors Indemnity Fund (“Fund”)(including notifications), out of which, only 65 claimants, i.e. 1.67 %, have sought claims of HK\$10 million or more.
- (ii) Of these 65 claims:
- (a) Payout of HK\$10 million
- There are 17 claims (0.44%) in which the Fund paid HK\$10 million (including defence costs but less the indemnified’s deductible).
- Of these 17 claims, 12 (70.6%) were brought by companies and 5 (29.4%) by individuals.
- (b) Payout between HK\$8 million and HK\$10 million
- There are 21 claims in which the actual or expected payment by the Fund (including defence costs) is or will be more than HK\$8 million but less than HK\$10 million.
- Of these 21 claims, 14 (66.66%) were brought by companies and 7 (33.33%) by individuals.
- (c) Payout between HK\$5 million and HK\$8 million
- There are 21 claims in which the claimants sought HK\$10 million or more, but which were settled for HK\$5 million or more but less than HK\$8 million (including defence costs).
- Of these 21 claims, 17 (80.95%) were brought by companies and 4 (19.05%) by individuals.
- (d) Open claims with payout which may be less than HK\$8 million

There are 2 open claims in which the claimants are seeking HK\$10 million or more but it is anticipated that the claims will settle for more than HK\$5 million but less than HK\$8 million (including defence costs).

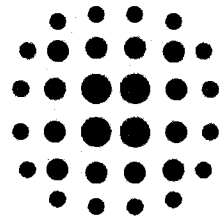
1 claim was brought by a company and the other by an individual.

(e) Open claims with payout which may reach HK\$10 million

There are 7 open claims in which it is anticipated that the claim payments (including defence costs) will reach HK\$10 million.

5 of these claims were brought by companies, 1 by individual, and 1 by a company and an individual jointly.

The Law Society of Hong Kong
15 May 2014



Consultation: Professional Indemnity Insurance

**Proportionate regulation: changes to minimum
compulsory professional indemnity cover**

May 2014

Summary of our proposals

- **Reduce the level of mandatory PI cover to £500,000**
- **Introduce an aggregate limit on claims**
- **Require compulsory cover for claims by individuals, small and medium-sized enterprises, trusts and charities¹**
- **Reduce run off cover to a minimum of three years**
- **Require firms to assess the level of cover appropriate to their firm beyond the minimum**

1. These proposals are designed to ensure that regulation is proportionate and targeted. They should assist small law firms in providing the right level of protection to their clients without incurring additional expense that drives up their costs and thus prices to consumers. The proposals will assist consumers in as much they ensure that firms have the right level of cover for the work undertaken and provide greater choice to empowered and informed consumers in achieving the level of cover that they wish to have. Overall these measures are designed to reduce costs for legal services providers and consumers. It is important to bear in mind that they relate to compulsory cover. There is nothing to prevent firms choosing to obtain higher or broader levels of cover or indeed for clients, particularly commercial clients, to agree their requirements with the law firm of their choice.

Background

2. We have been reviewing the compensation arrangements and how they fit within our overall regulatory approach. Changes have been made to the Assigned Risk Pool (ARP) and other elements of client protection in recent years. We will continue to review the minimum terms of insurance cover and other aspects of client protection as we seek to ensure that our regulatory approach is proportionate. We have launched a consultation on changes to the Compensation Fund alongside this consultation. Each of these consultations decisions stands on its own merits.
3. Professional indemnity insurance (PII) is widely recognised as an important protector of consumer and public interests. While the cover directly protects solicitors and law firms (regulated by the SRA) from the cost of claims against them, there are clear benefits to consumers. It provides consumers with greater certainty that any loss incurred (within the scope of the insurance) will be paid without reliance upon the solicitor, or the firm, neither of which may have assets to pay damages.

¹ The European Recommendation 2003/361/EC of 6 May 2003 categorises a micro enterprise with having a turnover of not more than €2 million. We consider that it is appropriate to convert the reference to £2m sterling for ease and certainty.

4. However, as with any regulatory intervention of this nature, PII is not free of cost for solicitors, firms, or consequently, consumers. Thus, the requirement for PII has both costs and benefits for consumers. The setting of the minimum terms and levels of that insurance has to be balanced to achieve the optimum benefit for consumers and the public. If the protection is very weak (or not in place at all) then consumers should benefit from lower costs but some consumers would face detriment including irrecoverable losses. Conversely, if the cover is very high then few, if any, consumers will face losses, but all consumers will pay higher prices and some consumers will be excluded from the legal market entirely because of the cost of legal services.
5. Competitive forces also provide some driver towards appropriate consumer protection. Solicitors hold themselves out within the legal market against unregulated competitors as meeting professional standards and this can include having appropriate PII cover. We know that this has some force in the legal market because many firms choose to take cover beyond the minimum required level either to protect themselves against claims, to provide confidence to their own clients or to set themselves apart within the market. Add to this the fact that, in any market for credence goods or services (i.e. those goods or services that the consumer cannot judge the quality of even after receiving them), consumer and public confidence in the market is likely to be increased by targeted regulation, and the challenge to balance the costs and benefits of any particular level or extent of cover of PII becomes clear. Regulation does not usually seek to offer absolute protection to all consumers – the cost would be prohibitive of preventing any harm and it would in any event be an impossible task. Our current client protection regime goes some way to offering redress to all consumers but it is arguable that the cost is too high – a cost that is paid by those consumers that access services and those that cannot afford the cost of doing so in different ways. The challenge for us as a regulator is to take account of the current context and strike the right balance.
6. In designing the level and extent of compulsory PII cover as set out in this consultation paper, we have had due regard to the regulatory objectives set out in the Legal Services Act 2007 and to the better regulation principles.² We will conduct an impact analysis as part of reaching any final decision post consultation.

Where should the minimum compulsory cover for any one and aggregate claims be set?

7. The Handbook currently requires firms to obtain a compulsory professional indemnity insurance cover of £2m (£3 million for incorporated firms). This level of

² Five principles were identified by the Better Regulation Task Force in 1997 as the basic tests of whether any regulation is fit for purpose. *Proportionality* (Regulators should intervene only when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.) *Accountability* (Regulators should be able to justify decisions and be subject to public scrutiny.) *Consistency* (Government rules and standards must be joined up and implemented fairly.) *Transparency* (Regulators should be open, and keep regulations simple and user-friendly.) *Targeting* (Regulation should be focused on the problem and minimise side effects.)

cover is a minimum requirement and is not dependent on the type of clients the firm has; the legal work it does; risk posed or a firm's claims history. Many firms add layers of cover above this level as they assess their exposure and potential risks.

8. However for many firms, for example sole practitioners with low turnover or say £100k - £250k per annum, coupled with low levels of transactions being undertaken, this level of compulsory cover may be above what is really needed.
9. In 2010 Charles River Associates (CRA), commissioned by the SRA, in their report "Review of SRA client financial protection arrangements"³ estimated that the average value of claims is between £40,000 and £60,000, with exception of conveyancing claims averaging between £60,000 and £180,000⁴. In addition, analysis of data from the Solicitors Indemnity Fund (SIF) for 1988-1999 shows that majority of claims (98%) were below £500,000, with only 2%⁵ of claims being above that figure. CRA in its report considered links between number of PC holders and number of claims. The number of claims rose by about 10% between sole practitioners and 2-partner firms, falling by about 5% for 3-4 partner firms while increasing again for firms with more than 5 partners.
10. Given that many firms buy additional protection for themselves above the minimum terms and levels where necessary, we should ask what level of minimum cover should be required by the regulator. The Law Society, in its practice note on PII cover, says *"the total amount of PII you need will depend on your firm's size and exposure to risks. You should seek advice from your broker and/or insurer to ensure that you have a sufficient level of cover for your firm."*
11. We do not consider, as some recent commentators have suggested⁶, that PII cover should be optional so we are proposing that all firms should have minimum compulsory cover, albeit at a lower level than previously required. Our proposal is therefore a middle ground between the most cost reductive option and the current very high level of protection. We will continue to keep the level of cover under review as we consider other aspects of the minimum terms to ensure that we have the right balance. This may lead to further reductions for the very smallest firms in the future.

Proposal 1 - We propose that the compulsory cover will be reduced to £500,000 for any one claim, for all firms and that no distinction will be made between different types of firms.

³ Charles River Associates, September 2010, <http://www.sra.org.uk/sra/how-we-work/reports/cra-financial-protection-arrangements.page>

⁴ Calculations based on Solicitors Indemnity Fund (SIF) data, as the last consolidated data set available for solicitors market. Data not restated to present day values.

⁵ Data not restated to present day values

⁶ <http://www.lawgazette.co.uk/analysis/comment-and-opinion/is-it-time-to-scrap-mandatory-pii/5040701.article>

12. The existing compulsory limit contains no cap on insurers' ultimate exposure during the period of insurance. This means that any number of claims may need to be paid, creating an unpredictable sideways exposure for insurers. This is often said to be a cost driver – one that is ultimately paid by consumers. The only measure insurers can rely upon is the aggregation clause in the Minimum Terms and Conditions (MTC) used to define Any One Claim. The application of the “aggregation” language depends on the specific facts of each claim and can provide uncertainty as to ultimate liability. This may have deterred some insurers from entering the market.
13. We believe that the introduction of a cap on insurers' total exposure would have a beneficial impact when compared to that currently, particularly if combined with a reduction in the limit for any one claim to £500,000 as above. We are interested in views on the appropriate level of a cap. Possibilities include a requirement of three cases at the maximum of £500,000 each, making the aggregate cap, for all claims, of £1,500,000 could be appropriate. We are mindful however that losses can occur to multiple clients because of a practitioner's disorganisation or incompetence. A cap of £5m may be more appropriate. There may also be a need to make the definition of “any one claim” to be reviewed to apply a more predictable cap at say £5m than an unpredictable one based on argument about the meaning of, for example, “one series of related acts or omissions”.⁷ It may be that the balance is to apply a clear cap at £5m or some other figure but reduce or remove the ability for insurers to add claims together as “one claim” (“aggregation”) to take advantage of the maximum payable for one claim. Given that there is currently no financially defined cap, we invite comments on the level at which one should now be set at either of these two levels or a different value.

Proposal 2 – We propose an introduction of a cap on insurers' ultimate exposure through a new aggregation limit.

14. We considered reducing the aggregation limit to a total exposure of £1,000,000 but concluded that this was too big a step to make at this stage, particularly since several consumers could suffer substantial losses individually under £500,000 but cumulatively adding up to a multi-million pound sum. Moving from cover limited by reference to debatable methods of aggregating claims will mean uncertainty as to whether all consumers will have their claims met because of exhaustion of the limits from earlier settlements. Consumers may need to seek alternative redress, such as proceedings against negligent practitioners directly. We would be particularly interested in evidence of the risk, or lack of risk, to consumers by providing for a cap.
15. Setting the aggregate limit at a level of say £1,500,000 will alleviate some of these instances; a higher limit of £5,000,000 will alleviate more. However we do acknowledge that there is a risk to consumers at any level. There is of course an implied risk even under the unlimited sideways cover because of the viability of insurance firms, and complexities arising from how claims are currently aggregated. Any change to the aggregation limit could be a significant reduction in cover, but our assessment of claim levels and frequency mean that we consider that this is a proportionate move that will support the right balance between consumer protection and lower costs of regulation. We will expect and if

⁷ See the current definition of “one claim” in clause 2.5 of the Minimum Terms and Conditions.

necessary require firms that deal with cases or transactions carrying higher risk (such as clinical negligence, catastrophic personal injury or probate) to obtain levels of cover appropriate to provide reasonable protection for consumers.

16. We have considered if these two proposals are likely to disproportionately impact upon vulnerable consumers, BME consumers or any other group. We do not have quantitative evidence with which to make this analysis. Our preliminary assessment is that the poorest third of the population are less likely to be involved in expensive transactions such as house purchase or probate and thus less likely to be affected by limits on cover, although there may be some risk arising from the aggregation cap where there is multiple failure by a firm. This combined with the analysis of claims as set out above means that we do not at this stage have serious concerns about the impact of these changes being negative for the more vulnerable consumers, and we would welcome evidence in consultation responses.
17. In our view it is appropriate to consider the impact of the requirement to have PII at the level of cover set out rather than simply to look at the change in level proposed. So our key question is the extent to which the level set out above can be justified with reference to our regulatory objectives and the better regulation principles. In our provisional view and allied with a competitive market and strong adherence to the professional principles, it will strike the right balance between consumer protection, access to justice and public confidence in lawyers and the legal market.
18. Indeed, given that we consider these changes will reduce the cost of PII (at least to some degree) we see potential, if marginal, benefits for poorer consumers through increased access to the legal market at lower cost. These are tentative assessments and we would welcome views, evidence and analysis that will allow us to conduct an impact assessment when considering the results of this consultation.

Who should firms be required to protect via professional indemnity insurance?

19. Currently every client can, in effect, assert a claim on the firm's professional indemnity insurance. However entities regulated by the SRA serve a wide range of clients, from individual consumers to financial institutions and government agencies. These consumers are not all empowered to the same extent in their choice of service provider. Nor do they possess the same amount of knowledge and confidence to engage with a firm to put things right if they are unhappy with an aspect of the service received. Large commercial service users are better able to protect their interests and make a commercial decision on the use of legal services and the risks involved.
20. It is generally accepted⁸ that most individual clients of legal services providers are likely to have significantly less information than the providers. In most cases the customer will face an informational disadvantage compared to the lawyer which means that they may be unable to assess the quality of services which they receive.

⁸ Charles River Associates, September 2010

21. The extent to which clients suffer from asymmetric information varies by type of client – individual vs corporate. Linked to the potential risk is the ability of different clients to understand this risk and protect themselves. It is common to offer less protection for corporate clients who have the resources and capabilities to assess quality and are often repeat purchasers of services who can also make their own insurance arrangements. In contrast, individual consumers will usually require greater protection. For example the Law Society of Ireland has certain restriction on commercial conveyancing and in some cases involving financial institutions, while Financial Advisors can exclude specific lines of business (though this may present its own challenges), subject to additional capital being held and for ICAEW misrepresentation leads to avoidance of claims.
22. Whether or not compulsory cover requirements should be restricted to certain clients is not a new issue. The SRA consulted on a proposal to exclude financial institutions from the compulsory indemnity cover in 2011⁹. Most respondents to the 2011 consultation did not support this proposal, citing mainly conveyancing related issues and potential problems in obtaining insurance for the excluded activity, without the compulsory prescription from the SRA. However, in our response, we noted that while financial institutions were perhaps understandably against the proposal:
- “Among those who favoured the ability to exclude cover for financial institutions, respondents typically highlighted that the exclusion would be fair as financial institutions are able to look after themselves. Some respondents stated that this would lower the cost of insurance for firms that did not work for financial institutions. ...
- Insurers were generally in favour of the proposal arguing that additional flexibility of cover would be beneficial and financial institutions do not need regulatory protection. They noted that the benefits would be seen in better management of the next financial downturn rather than in the immediate aftermath of the recent downturn. Some insurers noted that if they were unwilling to offer financial institution cover to a firm, they thought it unlikely they would be willing to offer the more reduced cover.
- Insurers indicated their willingness to offer cover for financial institutions. Some insurers indicated that the cover could have different terms associated to it compared to the rest of the MTC. Many highlighted the need to address the underlying regulatory issues to do with conveyancing.”
23. We believe that limiting the compulsory cover to individuals, small enterprises and charities will allow for more flexibility and lower cost of insurance, especially for firms providing services only to this group. We also believe that corporate institutions are able to look after themselves as they do not suffer from significant information asymmetry when dealing with whether or not they want insurance cover and if so how to structure it. There is of course nothing to prevent any lawyer or firm to purchase the level and extent of cover that they consider is right for them and their clients.

⁹ Future client financial protection arrangements – report on consultation responses and SRA conclusions, April 2011: <http://www.sra.org.uk/documents/SRA/consultations/financial-protection-consultation-analysis-responses.page>

Proposal 3 – We propose that the compulsory professional indemnity cover be limited to:

- individuals;
- small and medium-sized enterprises –businesses with a turnover not exceeding £2 million¹⁰;
- a charity with annual income less than £2 million; and
- a trustee of a trust with a net asset value less than £2 million.

24. This proposal mirrors (though is not dependent upon) a similar consultation issued in relation to the Compensation Fund and is consistent with the Legal Ombudsman.

25. The change proposed here will focus protection on the least sophisticated consumers. That is consistent with the better regulation principles and our regulatory objectives. It will promote competition by reducing costs and providing firms with a choice as to the level of cover provided to consumers outside of the minimum requirements. It will protect the consumer and public interest by upholding confidence in the legal profession and focusing mandatory protection on those consumers that require it the most. A full impact assessment will be completed as a part of any final decision making and we are particularly interested in any views, evidence or analysis that will support that impact assessment.

Should the SRA set the requirement for run-off cover at three years?

26. Professional indemnity insurance for law firms we regulate is on the 'claims made' basis. Claims do not necessarily arise immediately after the service has been delivered but rather are revealed over time. It is therefore important that insurance is in place even after a firm has closed. However, the period required for cover must be unlimited if a guarantee of no consumer detriment is to be upheld.

27. When closing down, firms are required to obtain cover for 6 years, at the cost of 2 to 3 times their annual level of premium. This is a significant cost to firms and therefore to consumers. It does not provide cover beyond six years and we know that claims can and do continue for many years, especially in relation to wills and house purchase.¹¹ Claims are however concentrated in the initial years after closure.

¹⁰ The European Recommendation 2003/361/EC of 6 May 2003 categorises a micro enterprise with having a turnover of not more than €2 million. We consider that it is appropriate to convert the reference to £ sterling.

¹¹ At present cover beyond six years is provided by the Solicitors Indemnity Fund (SIF) out of 'spare capital' built up prior to the ending of SIF. That cover beyond 6 years is currently scheduled to end in 2020.

28. CRA analysed run-off data from the Assigned Risk Pool (ARP) and identified that a large proportion of claims (60%¹²) are made within the first three years after the firm's closure. In following years number of claims decline, however there is a clear 'tail off' which in many cases lasts into the foreseeable future.
29. There is variation in run-off cover requirements posed by other regulators in England as well as legal regulators in other countries. For example Law Society of Ireland requires 2 years run-off cover, the same as ICAEW. On the other hand the Council for Licensed Conveyancers and the Royal Institution of Chartered Surveyors require 6 years run-off cover. It should be remembered that the reduction of run off cover would not reduce the liability of the solicitor or firm and firms, again, can choose to purchase more cover if they wish to do so. Clients can ask what insurance cover the firm has.

Proposal 4 – We propose to set the requirement for compulsory run-off cover to 3 years. The amount of run-off available will be limited by the compulsory cover amount and re-instatement (as described in Proposals 1 and 2).

30. This proposal would make business from law firms significantly more attractive to insurers, therefore encouraging new entrants and increasing competition in the market and potentially lowering prices for consumers. It will not prevent firms from offering higher levels of protection (even beyond the six year period) as part of a competitive offer to attract consumers where that may be appropriate such as with regard to long run matters in wills and conveyancing. We will undertake a full impact analysis as with other proposals and welcome evidence, analysis and views to support this.

How will clients be protected if the cover and run-off are reduced?

31. As mentioned earlier, many law firms choose to obtain cover beyond that specified in the minimum terms. This is usually because of the particular nature of the firms work and clients and is of course based on their own risk assessment. The net effect of the above proposals is to increase the scope for law firms that we regulate to take responsibility at a lower level than they currently do. It is a natural step for our model of regulation to allow more firms to assess risks themselves in order to achieve the right level of consumer protection. That allows regulatory interventions to be focused at the required level to achieve basic or minimum protections. A strong and independent legal profession, upholding the public interest and adhering to strong ethical requirements will want to ensure that wherever the minimum terms are set they have appropriate levels of cover for their firm with its practice and consumer base.
32. Our final proposal is therefore to introduce a new requirement that each firm assess the level of PII cover that is appropriate for its work. In undertaking this

¹² This figure is heavily influenced by conveyancing claims, coming from firms that were unable to obtain an open market insurance and therefore entered ARP and relates to claims made in 2008/09 which may be particularly affected by the timing of the property crash.

assessment it will need to consider not only its current practice but also any practice that was in place previously. Where we find that the firm's has not properly carried out its own assessment or it is insufficient, we may require the firm by regulatory action to take appropriate steps such as to obtain further cover or otherwise reduce the risk to clients.

33. It is already the case that if a firm has previously undertaken large amounts of high value conveyancing and private client work valued at several million per transaction (that it covered with an additional layer of non-compulsory PII cover) stops work it remains liable at that higher level of potential claim even if it now moves into lower value work. That is not changed by these proposals but it is made more common.
34. On implementing these changes it is recognised that a group of consumers (specifically but not exclusively those with potential claims over £500,000 and those cases between 3 and 6 years old) could face a change in cover. Indeed, a client may have checked at the time work was done that the firm had suitable cover and would have been told of the minimum level (and indeed any additional layer). Whether any particular firm has consumers that fall into this category will depend upon their own past work and client pattern. It will be a matter for each firm to assess if they need cover for that past period that is different to the current level. And of course no change in cover affects the individual's or firm's responsibility in law.
35. We are not suggesting that the minimum terms must be replicated at a higher level if the potential for claims is higher. It will be a matter for each firm reasonably and properly their clients' needs and to assess how they want to be positioned within the legal market.

Proposal 5 - we propose to change the Handbook to include an outcome that ensures that firms assess the need for and purchase cover beyond the minimum cover specified.

Current outcome - Code of Conduct, Chapter 1 (client care) is:

- *clients* have the benefit of your *compulsory professional indemnity insurance* and you do not exclude or attempt to exclude liability below the minimum level of cover required by the *SRA Indemnity Insurance Rules*;

Proposed additional outcome:

- *You* assess and purchase the level of cover that is appropriate for your current and past practice, taking into account potential levels of claim by your clients and others and any alternative arrangements you or the client may make.
36. We would particularly welcome any evidence or analysis about how firms could implement such an outcome, and how they assess and manage their own requirement for additional layers of insurance at present.

Proposal 1 - We propose that the compulsory cover will be reduced to £500,000 for each claim, for all firms and that no distinction will be made between different types of firms.

Proposal 2 - We propose an introduction of a cap on insurers' ultimate exposure through a new aggregation limit.

Proposal 3 – We propose that the compulsory professional indemnity cover be limited to:

- individuals;
- small and medium-sized enterprises –a business with a turnover not exceeding £2 million¹³;
- a charity with annual income less than £2 million; and
- a trustee of a trust with a net asset value less than £2 million.

Proposal 4 – We propose to set the requirement for compulsory run-off cover to 3 years. The amount of run-off available will be limited by the compulsory cover amount and re-instatement (as described in Proposals 1 and 2).

Proposal 5 – we propose to change the Handbook to include an outcome that ensures that firms assess the need for and purchase cover beyond the minimum cover specified.

Impact of our proposal

37. A purist principles/OFR approach to PII would be to require firms to have PII which provides protection to their clients and which is appropriate in the context of their business, clients and type and value of work undertaken. Then, firms *could* make proportionate decisions and be held to account by us for those decisions.
38. We expect that the impact will vary depending on the current and past type of work carried out by firms, size of firm and claims history. While some firms may see their cost or effort to obtain insurance increasing, others will see an opposite trend.
39. These proposals are intended to encourage insurers to enter the market and provide competition. In the long term we anticipate the overall cost of insurance to fall and therefore costs to consumers be reduced.
40. Considering all these variations we estimate that the net effect of these changes will be positive on the profession and consumers. We will monitor these trends annually through the Law Society survey.

¹³ The European Recommendation 2003/361/EC of 6 May 2003 categorises a micro enterprise with having a turnover of not more than €2 million. We consider that it is appropriate to convert the reference to £ sterling.

Consultation questions

1. Do you agree with reducing the compulsory cover to £500,000?
2. Do you agree with introducing a cap on insurers' liability?
3. Do you think any such cap should be £1,500,000, £5,000,000 or another figure?
4. Do you agree that the introduction of a cap should be balanced by reducing the opportunity for claims to be added together to treat them as "one claim"?
5. Do you agree with limiting the compulsory cover requirements to individuals, small enterprises, charities and trusts?
6. Do you agree with reducing the run-off cover to 3 years?
7. Do you agree with the proposed changes to Code of Conduct Outcome?
8. Do you have any views about our assessment of the impact of these changes?
9. Are there any impacts, available data or evidence that we should consider in finalising our impact assessment?
10. Are there any other aspects of the minimum terms and conditions for PII that you think we should review?

How to respond to this consultation

Online

Use our online consultation questionnaire—<https://forms.sra.org.uk/s3/consult-pii>— to compose and submit your response. (You can save a partial response online and complete it later.)

Email

Please send your response to consultation@sra.org.uk. You can download and attach a consultation questionnaire.

Please ensure that:

- you add the title "PII – Reducing MTC" in the subject field,
- you identify yourself and state on whose behalf you are responding (unless you are responding anonymously),
- you attach a completed About You form,
- you state clearly if you wish us to treat any part or aspect of your response as confidential.

If it is not possible to email your response, hard-copy responses may be sent to:

Solicitors Regulation Authority
Policy and Strategy Unit – Professional Indemnity Insurance
The Cube
199 Wharfside Street,
Birmingham,

B1 1RN

Deadline

Please send your response by 18 June 2014.

Confidentiality

A list of respondents and their responses may be published by the SRA after the closing date. Please express clearly if you do not wish your name and/or response to be published. Though we may not publish all individual responses, it is SRA policy to comply with all Freedom of Information requests.



THE
LAW SOCIETY
OF HONG KONG
香港律師會

Annex 6

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18 March 2014

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Clerk to Panel
Panel on Administration
of Justice and Legal Services
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By E-mail
(panel_ajls@legco.gov.hk)

Dear Sir,

Solicitor Corporation Rules and consequential amendments

The Panel on Administration of Justice and Legal Services ("AJLS Panel") has invited the Law Society to consider the question of whether to allow solicitor corporations to form partnerships.

The Working Party on Solicitor Corporation Rules ("Working Party") has considered the question.

The Working Party notes the concerns of the AJLS Panel that solicitor corporations might want to form partnerships. However, the Working Party opines it does not appear there is any commercial benefit for solicitor corporations to do so. The Working Party therefore does not envisage such a new creation would likely be formed by solicitor corporations.

The AJLS Panel should also note that rule 8(3) of the draft Solicitor Corporation Rules prohibits a member of a solicitor corporation or an employee of a solicitor corporation who is a solicitor to hold in any capacity (including that of trustee) or beneficially own any interest in, any share in any other solicitor corporation, without the prior written consent of the Council. Rule 8(3) of the 11th draft of the Solicitor Corporation Rules is enclosed for your reference.

Yours sincerely,

Vivien Lee
Director of Standards & Development

Encl.

同心展關懷

caringorganisation

Awarded by The Hong Kong Council of Social Service
香港社會服務聯會頒發

Incorporated in 1907 as a company limited by guarantee



Part 3

Conduct of Solicitor Corporation and its Members, etc.

7. Conduct of solicitor corporation

- (1) A solicitor corporation must not engage in any activity that does not form part of, or is not incidental to, the business of practising as a solicitor or as solicitors.
- (2) A solicitor corporation must at all times be managed and controlled by a solicitor or solicitors.
- (3) A solicitor corporation must not conduct its business in any name other than that approved under these Rules.
- (4) Within 14 days after delivering any document to the Registrar of Companies in purported compliance with the Companies Ordinance (Cap. 32), a solicitor corporation must provide the Society with a copy of the document.

8. Conduct of member and employee

- (1) A member of a solicitor corporation must not create any charge or other third party interest over any share in the corporation.
- (2) For the purpose of attending and voting at any meeting of a solicitor corporation, a member of the corporation must not appoint as a proxy any person other than a solicitor who is a member or employee of the corporation.
- (3) A member of a solicitor corporation, or an employee of a solicitor corporation who is a solicitor (whether the member or employee holds a current practising certificate or not), must not without the prior written consent of the Council—
 - (a) hold in any capacity (including that of trustee), or beneficially own any interest in, any share in any other solicitor corporation;

Solicitor Corporation Rules

Part 3 Section 8

6

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- (b) be or act as an officer, 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 the member's or employee's own account.
-