

CODE OF CONDUCT

THE ACCEPTANCE OF INSTRUCTIONS

50. (a) Subject to such exceptions as may be authorised by custom or the Bar Council as set out in Annex 20, a barrister may not act in a professional capacity except upon the instructions of a solicitor or the Director of Legal Aid or the Government. Notwithstanding that he does so for no fee, a barrister who appears in or drafts a formal document for the purpose of a contentious matter is acting in a professional capacity. There is, however, no objection to a barrister giving advice free on legal matters to a friend or relative or on a charitable basis.

(b) Subject to the Direct Professional Access Rules set out in Annex 19 and Annex 19A, a barrister may accept instructions from a member of a “recognised professional body” without the intervention of a solicitor in any matter of a kind which falls generally within the professional expertise of the members of the recognised professional body. For the purpose of this Code, a “recognised professional body” means a professional body which has been approved by the Bar Council as set out in paragraph 2(f) of Annex 20 for the purpose of “Direct Professional Access work” and “Direct Professional Access work” means work undertaken by a practising barrister pursuant to a brief or instructions delivered by a member of a recognised professional body in accordance with the Direct Professional Access Rules.

ANNEX 19
(paragraph 50(b))

DIRECT PROFESSIONAL ACCESS RULES AND
RECOMMENDED STANDARD TERMS OF ENGAGEMENT

1. Subject to these rules, a barrister may accept Direct Professional Access work from a member of a recognised professional body.

2. A professional body shall only be recognised for the purpose of these rules when it has been approved as a “recognised professional body” by the Bar Council.

3. In deciding whether to grant such recognition regard will be had to whether the body satisfies each of the following criteria:-

(a) its members provide skilled and specialist services;

(b) its affairs and the conduct of its members are regulated by a written constitution which among other matters -

(i) provides for admission to membership of persons who have satisfied by examination specified high standards of general and professional education, and

(ii) makes unethical or dishonourable conduct by a member a disciplinary offence and has an effective enforcement procedure for breach of its disciplinary rules;

(c) its members are likely to have a significant requirement to retain the services of a barrister for the benefit of their clients or employers and those engaging them.

(Circular No. 20/96)

4. A barrister shall only be entitled to accept instructions in Direct Professional Access work from a member of a recognised professional body who should be his first point of contact and must be identified at the time of giving instructions and confirm that he or the company, firm or other body of which he is a director, partner, member or employee is insured against claims for professional negligence in respect of such work for an amount which he considers to be reasonable having regard to the nature of the work giving rise to such instructions. Such a member of the recognised professional body may be a director, partner, member or employee of a company, firm or other body giving instructions in that capacity in the course of his professional practice and assumes personal liability in respect of such instructions including the obligation to discharge the fees of the barristers promptly in addition to such other liability as may be agreed between the barrister and the member or on behalf of such company, firm or other body. In the case of payment of the barrister's fees, the company, firm or other body of which he is a director, partner, member or employee will also be liable jointly with such a member.

5. A barrister shall not accept any brief or instructions in Direct Professional Access work unless he is insured against claims for professional negligence in respect of such work for an amount which he considers to be reasonable having regard to the nature of the work which he is going to undertake pursuant to such instructions and a certificate issued by his insurer to the effect that he has professional indemnity insurance in respect of Direct Professional Access work and stating the period for which he is so insured has been supplied to the Bar Council.

6. A barrister must not accept any brief or instructions in Direct Professional Access work:-

- (a) to receive or handle clients' money;
- (b) to do substantial administrative work not normally performed by a practising barrister in Hong Kong;
- (c) to do inter-partes work (for example the conduct of correspondence with an opposite party) of a kind not normally performed by a practising barrister in Hong Kong;
- (d) to appear in the Court of Final Appeal, the High Court, the District Court or a Magistrate's Court;
- (e) (or shall decline to act further) in a case in which at any stage he considers it in the interests of the lay client that a solicitor be instructed.

7. A barrister who accepts Direct Professional Access work must

- (a) keep a case record (whether on card or computer) which sets out:-
 - (i) the date of receipt of the brief or instructions, the name of the professional client, the name of the case and any requirements of the professional client as to time limit;
 - (ii) the date on which the brief or instructions were accepted;
 - (iii) the terms on which the brief or instructions were accepted;

(iv) the dates of subsequent instructions, of the despatch of advices and other written work, of conferences and of telephone conversations;

(v) when agreed, the fee;

(vi) when made, any promises or undertakings as to the completion of the work;

(vii) as soon as they become apparent to the barrister, any time limits;

(b) retain:-

(i) copies of briefs and instructions (including supplemental instructions);

(ii) copies of all advices given and documents drafted or approved;

(iii) a list of all documents enclosed with any brief or instructions;

(iv) notes of all conferences and of all advices given on the telephone; and

(c) keep a forward diary (which may be kept on a chambers' basis or for each individual barrister provided that in either case it is easy to inspect and is regularly inspected) of all statutory or other time limits which are applicable to or which arise out of current Direct Professional Access matters.

8. Unless and to the extent that they are excluded or varied by agreement, all briefs and instructions are deemed to be accepted by a barrister on the terms and conditions of the Recommended Standard Terms of Engagement which are reproduced below. Until the law is changed, by virtue of his status all instructions are accepted by a barrister without there being a contract. Accordingly, the Recommended Standard Terms of Engagement will be binding in honour only. A barrister is not obliged to adopt the Recommended Standard Terms of Engagement but is strongly recommended to do so and the terms should be confirmed in writing if possible before instructions are accepted.

9. Nothing in these rules shall affect the Overseas Practice Rules or any other rules in the Code of Conduct entitling a barrister to accept instructions from any person other than a solicitor.

10. Save as is in these rules otherwise provided the Code of Conduct shall apply to instructions received and accepted under these rules.

RECOMMENDED STANDARD TERMS OF ENGAGEMENT
OF A BARRISTER UNDERTAKING
DIRECT PROFESSIONAL ACCESS WORK

Preamble

(i) These Standard Terms of Engagement have been approved by the Bar Council. The Bar Council has further recognised [name of the recognised professional body] as a recognised professional body under and for the purposes of the Direct Professional Access Rules.

(ii) They are intended to apply in any case where a barrister is instructed by a member of [the name of the recognised professional body] in accordance with the Direct Professional Access Rules in Annex 19 of the Bar Code of Conduct.

(iii) Any member of [name of the recognised professional body] will be deemed to instruct a barrister on these Standard Terms unless and to the extent that they are excluded or varied by agreement between that member and the barrister whom he instructs in any particular matter.

Definitions

In these Standard Terms:-

“Bar Code of Conduct” means the Code of Conduct for the Bar of Hong Kong for the time being in force;

“Direct Professional Access Rules” means the Rules in Annex 19 of the Bar Code of Conduct;

“A recognised professional body” means a professional body recognised by the Bar Council under and for the purposes of the Direct Professional Access Rules;

“Instructing member” means a member of a recognised professional body from whom a barrister has accepted instructions in accordance with the Direct Professional Access Rules;

“Instructions” include a brief save where the context otherwise requires.

Instructions

1. A barrister has the right in circumstances set out in the Direct Professional Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.

2. (i) A barrister may only accept instructions from a member of a recognised professional body who is identified at the time of giving instructions and confirms that he or the company, firm or other body of which he is a director, partner, member or employee is insured against claims for professional negligence in respect of the matter giving rise to such instructions.

(ii) It shall accordingly be the duty of a member of such a body wishing to instruct a barrister to identify himself as the instructing member at the time of giving instructions and confirms that he or the company, firm or other body of which he is a director, partner, member or employee is insured against claims for professional negligence in respect of the matter giving rise to such instructions.

3. (i) A barrister may only accept instructions from a member of a recognised professional body in a matter of a kind which falls generally within the professional expertise of that member of that professional body.

(ii) An instructing member warrants that the matter in which he is instructing the barrister is of a kind which falls substantially within the field in which he normally practises.

4. (i) An instructing member should, in addition to instructing a barrister in his personal capacity, instruct the barrister in his capacity as a director, partner, member or employee of a company, firm or other body.

(ii) The instructing member warrants that he is authorised by the relevant company, firm or other body, as the case may be, to instruct the barrister.

5. (i) Unless the instructing member otherwise stipulates and the barrister agrees, the barrister will deal with instructions other than a brief as soon as he reasonably can in the ordinary course of his work.

(ii) Where for any reason time is of the essence the instructing member must, when he delivers his instructions, so inform the barrister or his clerk or secretary and of the particular reason for urgency in order that the barrister or his clerk or secretary may decide whether in those circumstances he can accept the instructions. That information must be communicated to the barrister or his clerk or secretary separately from the instructions themselves.

6. Notwithstanding that instructions have been delivered to a barrister, the barrister shall not be deemed to have accepted those instructions until he has had a reasonable opportunity to peruse them and decide whether they are appropriate for Professional Direct Access.

7. Without prejudice to any other right which a barrister may have in accordance with the Bar Code of Conduct to return his instructions, a barrister shall be entitled at his complete discretion, which he shall exercise in the interests of the lay client, at any time to require, as a condition of his continuing to act in the matter on which he is instructed, that a solicitor shall take over the instructions or that the services of a solicitor shall otherwise be retained to assist in the future conduct of that matter. In such an event the instructing member shall have the option of withdrawing his instructions to the barrister or of complying with the barrister's request.

8. (i) Unless otherwise agreed a barrister accepts a brief upon the understanding that he may be unavoidably prevented by a conflicting professional engagement from attending the case.

(ii) A barrister shall inform the instructing member immediately there is an appreciable risk that he may not be able to undertake a brief which he has accepted.

(iii) In the event that a barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another barrister to be engaged and to master the brief.

The Barrister's Fees

9. It is the obligation of the instructing member, jointly with the company, firm or other body of which he is a director, partner, employee or member, to be responsible for the payment of the barrister's fees.

10. (i) A barrister shall be entitled to require payment of his fee at the time of accepting instructions.

(ii) Otherwise the barrister's fees shall be paid promptly upon submission of a fee note.

11. (i) Unless otherwise agreed, a fee note will be submitted at the conclusion of the matter on which the barrister is instructed.

(ii) If, however, that matter is protracted, an interim fee note or notes may be submitted at intervals of not less than two months.

12. A brief will only be accepted by a barrister after a fee has been agreed with the instructing member.

13. In the case of instructions other than a brief it is a matter for agreement between the instructing member and the barrister or his clerk or secretary whether the fee shall be agreed before the instructions are accepted or at any later date.

Copies of Instructions and Records of Advice

14. A barrister shall be entitled for the purposes of his records to retain his instructions or any papers delivered therewith or, if the instructing professional should require the return of such instructions and papers, to take and retain a copy of such instructions or papers and of any written advice, and if so requested by the barrister it shall be the duty of the instructing member to supply him with and to permit him to retain for those purposes a copy of such instructions, papers or advices.

15. In any case where a barrister gives advice orally it shall be the duty of the instructing member to make a written record of that advice and submit it to the barrister for his approval as soon as is practicable and in any event by such date as the barrister may reasonably require.

ANNEX 19A
(paragraph 50(b))
(Circular No. 5/97)

**DIRECT PROFESSIONAL ACCESS RULES AND
RECOMMENDED STANDARD TERMS
OF ENGAGEMENT FOR
DIRECT ACCESS BY ARBITRATORS**

1. Subject to these rules, a barrister may accept Direct Professional Access work from a member of the Chartered Institute of Arbitrators or such other body of Arbitrators as may be specified in Annex 20.
2. A professional body shall only be recognised for the purpose of these rules when it has been approved as a “recognised professional body” by the Bar Council.
3. In deciding whether to grant such recognition regard will be had to whether the body satisfies each of the following criteria:-
 - (a) its members provide skilled and specialist services;
 - (b) its affairs and the conduct of its members are regulated by a written constitution which among other matters -
 - (i) provides for admission to membership of persons who have satisfied specified high standards of general and professional education, and
 - (ii) makes unethical or dishonourable conduct by a member a disciplinary offence and has an effective enforcement procedure for breach of its disciplinary rules;
 - (c) its members are likely to have a significant requirement to retain the services of a barrister for the benefit of their clients, employers or those engaging them.
4. A barrister shall only be entitled to accept instructions in Direct Professional Access work from a member of a recognised professional body who should be his first point of contact.
5. A barrister shall not accept any brief or instructions in Direct Professional Access work unless he is insured against claims for professional negligence in respect of such work for an amount which he considers to be reasonable having regard to the nature of the work which he is going to undertake pursuant to such instructions and a certificate issued by his insurer to the effect that he has professional indemnity insurance in respect of Direct Professional Access work and stating the period for which he is so insured has been supplied to the Bar Council.

6. A barrister must not accept any brief or instructions in Direct Professional Access work:-

(a) to receive or handle clients' money;

(b) to do substantial administrative work not normally performed by a practising barrister in Hong Kong;

(c) to do inter-partes work (for example the conduct of correspondence with an opposite party) of a kind not normally performed by a practising barrister in Hong Kong;

(d) to appear in the Court of Final Appeal, the High Court, the District Court or a Magistrate Court;

(e) (or shall decline to act further) in a case in which at any stage he considers it in the interests of the lay client that a solicitor be instructed.

7. A barrister who accepts Direct Professional Access work must:

(a) keep a case record (whether on card or computer) which sets out:-

(i) the date of receipt of the brief or instructions, the name of the professional client, the name of the case and any requirements of the professional client as to time limit;

(ii) the date on which the brief or instructions were accepted;

(iii) the terms on which the brief or instructions were accepted;

(iv) the dates of subsequent instructions, of the despatch of advices and other written work, of conferences and of telephone conversations;

- (v) when agreed, the fee;
- (vi) when made, any promises or undertakings as to the completion of the work;
- (vii) as soon as they become apparent to the barrister, any time limits;

(b) retain:-

- (i) copies of briefs and instructions (including supplemental instructions);
- (ii) copies of all advices given and documents drafted or approved;
- (iii) a list of all documents enclosed with any brief or instructions;
- (iv) notes of all conferences and of all advices given on the telephone; and

(c) keep a forward diary (which may be kept on a chambers* basis or for each individual barrister provided that in either case it is easy to inspect and is regularly inspected) of all statutory or other time limits which are applicable to or which arise out of current Direct Professional Access matters.

8. Unless and to the extent that they are excluded or varied by agreement, all briefs and instructions are deemed to be accepted by a barrister on the terms and conditions of the Recommended Standard Terms of Engagement which are reproduced below. Until the law is changed, by virtue of his status all instructions are accepted by a barrister without there being a contract. Accordingly, the Recommended Standard Terms of Engagement will be binding in honour only. A barrister is not obliged to adopt the Recommended Standard Terms of Engagement but is strongly recommended to do so and the terms should be confirmed in writing if possible before instructions are accepted.

9. Nothing in these rules shall affect the Overseas Practice Rules or any other rules in the Code of Conduct entitling a barrister to accept instructions from any person other than a solicitor.

10. Save as is in these rules otherwise provided the Code of Conduct shall apply to instructions received and accepted under these rules.

RECOMMENDED STANDARD TERMS OF ENGAGEMENT OF A BARRISTER
UNDERTAKING
DIRECT PROFESSIONAL ACCESS WORK
FOR ARBITRATORS

Preamble

(i) These Standard Terms of Engagement have been approved by the Bar Council. The Bar Council has further recognised the Chartered Institute of Arbitrators as a recognised professional body under and for the purposes of the Direct Professional Access Rules.

(ii) They are intended to apply in any case where a barrister is instructed by a member of the Chartered Institute of Arbitrators in accordance with the Direct Professional Access Rules in Annex 19A of the Bar Code of Conduct.

(iii) Any member of the Chartered Institute of Arbitrators will be deemed to instruct a barrister on these Standard Terms unless and to the extent that they are excluded or varied by agreement between that member and the barrister whom he instructs in any particular matter.

Definitions

In these Standard Terms:-

“Bar Code of Conduct” means the Code of Conduct for the Bar of Hong Kong for the time being in force;

“Direct Professional Access Rules” means the Rules in Annex 19A of the Bar Code of Conduct;

“A recognised professional body” means a professional body recognised by the Bar Council under and for the purposes of the Direct Professional Access Rules;

“Instructing member” means a member of a recognised professional body from whom a barrister has accepted instructions in accordance with the Direct Professional Access Rules;

“Instructions” include a brief save where the context otherwise requires.

Instructions

1. A barrister has the right in circumstances set out in the Direct Professional Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.

2. (i) A barrister may only accept instructions from a member of a recognised professional body in a matter of a kind which falls generally within the professional expertise of that member of that professional body.

(ii) An instructing member warrants that the matter in which he is instructing the barrister is of a kind which falls substantially within the field in which he normally practises.

3. An instructing member instructs a barrister in his personal capacity and shall be regarded as the body instructing the barrister for the purposes of the Bar Code of Conduct.

4. (i) Unless the instructing member otherwise stipulates and the barrister agrees, the barrister will deal with instructions other than a brief as soon as he reasonably can in the ordinary course of his work.

(ii) Where for any reason time is of the essence the instructing member must, when he delivers his instructions, so inform the barrister or his clerk or secretary and of the particular reason for urgency in order that the barrister or his clerk or secretary may decide whether in those circumstances he can accept the instructions. That information must be communicated to the barrister or his clerk or secretary separately from the instructions themselves.

5. Notwithstanding that instructions have been delivered to a barrister, the barrister shall not be deemed to have accepted those instructions until he has had a reasonable opportunity to peruse them and decide whether they are appropriate for Professional Direct Access.

6. Without prejudice to any other right which a barrister may have in accordance with the Bar Code of Conduct to return his instructions, a barrister shall be entitled at his complete discretion, which he shall exercise in the interest of the lay client, at any time to require, as a condition of his continuing to act in the matter on which he is instructed, that a solicitor shall take over the instructions or that the services of a solicitor shall otherwise be retained to assist in the future conduct of that matter. In such an event the instructing member shall have the option of withdrawing his instructions to the barrister or of complying with the barrister's request.

7. (i) Unless otherwise agreed a barrister accepts a brief upon the understanding that he may be unavoidably prevented by a conflicting professional engagement from attending the case.

(ii) A barrister shall inform the instructing member immediately there is an appreciable risk that he may not be able to undertake a brief which he has accepted.

(iii) In the event that a barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another barrister to be engaged and to master the brief.

The Barrister's Fees

8. It is the obligation of the instructing member to be responsible for the payment of the barrister fees.

9. (i) A barrister shall be entitled to require payment of his fee at the time of accepting instructions.

(ii) Otherwise the barrister fees shall be paid promptly upon submission of a fee note.

10. (i) Unless otherwise agreed, a fee note will be submitted at the conclusion of the matter on which the barrister is instructed.

(ii) If, however, that matter is protracted, an interim fee note or notes may be submitted at intervals of not less than two months.

11. A brief will only be accepted by a barrister after a fee has been agreed with the instructing member.

12. In the case of instructions other than a brief it is a matter for agreement between the instructing member and the barrister or his clerk or secretary whether the fee shall be agreed before the instructions are accepted or at any later date.

Copies of Instructions and Records of Advice

13. A barrister shall be entitled for the purposes of his records to retain his instructions or any papers delivered therewith or, if the instructing professional should require the return of such instructions and papers, to take and retain a copy of such instructions or papers and of any written advice, and if so requested by the barrister it shall be the duty of the instructing member to supply him with and to permit him to retain for those purposes a copy of such instructions, papers or advices.

14. In any case where a barrister gives advice orally it shall be the duty of the instructing member to make a written record of that advice and submit it to the barrister for his approval as soon as is practicable and in any event by such date as the barrister may reasonably require.

ANNEX 20
(paragraph 50)

ACCEPTANCE OF BRIEF OR INSTRUCTIONS
DIRECTLY FROM PERSONS AUTHORISED
BY CUSTOM OR THE BAR COUNCIL

1. The following are the exceptions authorised by custom as referred to in paragraph 50 of the Code of Conduct:

- (a) Instructions from Patent and Trade Mark Agents.

2. The following are the exceptions authorised by the Bar Council as referred to in paragraph 50 of the Code of Conduct:

- (a) Instructions from the Duty Lawyer Service;
- (b) Provision of advisory service at centres of the Duty Lawyer Service;
- (c) Provision of services pursuant to the Scheme for Pro Bono work organised under the supervision of the Council
(Circular No. 32/94);
- (d) Provision of advisory service to the Medical, Dental and Chiropractors' Councils (Circular No. 72/96) and the Veterinary Surgeons Board (Circular No. 67/97); and other tribunals or bodies exercising judicial or quasi-judicial functions as established by statute (Circular No. 8/99);
- (e) Instructions from foreign lawyers (para 170);
- (f) Instructions from members of the following recognised professional bodies: (Circular No. 5/97);

- (i) Hong Kong Society of Accountants

Address: 13th & 17th Floors,
Belgian Bank Tower,
77-79 Gloucester Road,
Wanchai, Hong Kong

Telephone: 2529 9271

Fax: 2865 6603

(ii) Hong Kong Institute of Company Secretaries

Address: 22nd Floor,
Prosperous Commercial Building,
54-58 Jardine's Bazaar,
Causeway Bay, Hong Kong.

Telephone: 2881 6177

Fax: 2881 5050

(iii) The Chartered Institute of Arbitrators

Address: 24 Angel Gate, City Road,
London EC1V 2RS,
United Kingdom

Telephone: (44) 171 837 4483

Fax: (44) 171 837 4185

(Note: In respect of direct access by members of the Chartered Institute of Arbitrators, the Direct Professional Access Rules in Annex 19A shall apply.)