

立法會 *Legislative Council*

立法會CB(2)548/03-04(02)號文件

檔 號：CB2/SS/3/03

《簡易處理申訴(律師)規則》小組委員會

立法會秘書處擬備的背景資料文件

以簡易方式處理針對律師的申訴

目的

本文件旨在提供背景資料，闡述《2001年成文法(雜項規定)條例草案》委員會(下稱“法案委員會”)過往就透過定額罰款制度，以擬議的簡易紀律程序處理律師的違規行為，而無須經律師紀律審裁組(下稱“審裁組”)就有關行為進行全面聆訊所作的討論。

背景

2. 在《法律執業者條例》(第159章)經《成文法(雜項規定)條例》(2003年第23號)修訂前，並無機制處理律師的輕微違規事件。要處理有關律師的行為，一是由審裁組展開全面聆訊，或是由香港律師會理事會(“理事會”)向該律師發出並無制裁效力的指責書。據律師會表示，對有關各方而言，由審裁組展開全面聆訊，既浪費時間，費用又高昂；而指責書則實際上對阻嚇違規行為的作用甚微。引進簡易程序處理輕微違規事件，是要填補發出指責書與審裁組展開全面聆訊之間的鴻溝。

《2001年成文法(雜項規定)條例草案》委員會所作的討論

以簡易方式處理針對律師的申訴的新紀律程序

3. 《2001年成文法(雜項規定)條例草案》於2001年7月4日提交立法會，立法會其後成立法案委員會研究該條例草案。條例草案於2002年7月10日獲立法會通過。

4. 條例草案的目的之一，是修訂《法律執業者條例》(第159章)，以便實施新的紀律程序，由律師紀律審裁團的審裁組召集人透過向承認違反了訂明條文、理事會所訂明的執業指引或專業操守原則，並對此負有法律責任的律師施加定額罰款，以此簡易方式處理申訴。

5. 基本上，以簡易方式處理申訴的擬議程序如下 ——
- (a) 理事會研究某事宜是否適合由審裁組召集人處理時，或會考慮所指稱的違規事件是否蓄意、該事件的嚴重程度，以及任何理事會認為相關的其他因素；
 - (b) 所須處理的事項涉及一項指稱的違規事件，而該違規事件已列為理事會擬訂立的有關規則中的表列項目；及
 - (c) 倘申訴所針對的律師不承認負有法律責任，或不同意以定額罰款制度處理該項申訴，該事項將交由審裁組進行聆訊。

適合以簡易方式處理的違規事件範圍

6. 據律師會表示，適合根據新紀律程序處理的罪行類別，只限於不涉及不誠實行為或金錢問題的輕微技術性違規事件。律師會認為此類違規事件不宜交由審裁組作全面聆訊，但仍應受到制裁。在界定可由審裁組召集人以定額罰款方式處理的違規事件的範圍時，會以有關事件的嚴重程度為量度起點。然而，其他可能相關的情況亦包括，舉例，該違規事件只屬一時疏忽，還是蓄意造成。

7. 律師會曾向法案委員會提供擬議受有關規則涵蓋的罪行一覽表(附錄I)。律師會亦告知法案委員會，該會在2000年曾向律師發出共168封指責書，而在1999年則發出118封。在168封指責書中，有37封屬可引用擬議定額罰款制度的範圍，其餘131封則關乎對律師的瑣屑申訴。

涉及不誠實行為的罪行

8. 法案委員會認為，律師所觸犯的任何違反事件如涉及不誠實行為，都不應以新的紀律程序處理。律師會認為，條例草案訂明理事會可考慮的因素之一，是“所指稱的違反事件是否蓄意”，這條文已可令涉及不誠實行為的違反事件不能以新紀律程序處理。為消除含糊不清的情況，法案委員會建議修訂此草擬方式，加入一項明訂條文，指明理事會應考慮所指稱的違反事件是否涉及不誠實意圖。

9. 經徵詢律師會的意見後，政府當局同意提出一項修正案，在條例草案內加入一項額外因素，即“作出所指稱的違反事件是否出於不誠實意圖”。政府當局又告知法案委員會，律師會已同意不將涉及不誠實意圖的違規行為納入理事會擬訂立的有關規則中表列項目一覽表內。

10. 新訂的《法律執業者條例》第9A(1B)條(《成文法(雜項規定)條例》(2003年第23號條例)第103(a)條)的文本載於附錄II。待律師會訂立用以實施簡易紀律程序的有關規則後，有關條文會在律政司司長在憲報公告所指定的日期生效。

徵詢律師會會員的意見

11. 關於律師會會員是否知悉擬議的新紀律程序，律師會提供了一篇於2001年3月在該會刊物“香港律師”中發表題為“另擇紀律程序簡介”的文章(附錄III)，供法案委員會參閱。

12. 法案委員會部分委員認為，律師會應向其會員充分說明擬議定額罰款機制的運作細節。他們亦強調，在實行該制度時，律師會不應忽略維持有關程序的透明度的需要，並應保障公眾對法律執業者違反專業操守的知情權。

2003年11月21日刊登憲報的《簡易處理申訴(律師)規則》(第251號法律公告)

13. 香港律師會按照《法律執業者條例》第73條訂立的《簡易處理申訴(律師)規則》，於2003年11月26日提交立法會省覽。內務委員會於2003年11月29日會議席上同意成立小組委員會，以研究該規則。

14. 該規則旨在實施根據該條例第9AB條所訂的另一類別紀律程序。律師會提供的該規則的文本，連同該會致司法及法律事務委員會以解釋該規則的函件，已於2003年11月19日隨立法會CB(2)375/03-04(01)號文件(附錄IV)送交事務委員會參閱。

15. 政府當局曾就該規則的運作提出問題，律師會亦已作出回應。政府當局於2003年12月5日致函《簡易處理申訴(律師)規則》小組委員會，在函件(於2003年12月5日發出的立法會CB(2)548/03-04(03)號文件)中就律師會的回應提供資料。政府當局提出的問題如下——

- (a) 律師會理事會在何種情況下會將有關根據《法律執業者條例》第9(1A)條將某事宜提交審裁組召集人的決定撤回；
- (b) 將罰款額定於1萬元的理據；及
- (c) 將調查費用劃一定於15,000元的理據。

立法會秘書處
議會事務部2
2003年12月5日

**OFFENCES WHICH MAY BE DEALT WITH
BY MEANS OF AN INTERMEDIATE SANCTION**

NOTE: For any of the offences listed below, the Council has complete discretion as to the action to be taken for breach. It may resolve to take no action, or to issue a letter of regret or disapproval, or to agree to deal with the matter by way of intermediate sanction, or to refer the matter to a Solicitors Disciplinary Tribunal for a full hearing.

LEGAL PRACTITIONERS ORDINANCE

Section 8 “Accountant’s reports”

- Failure to submit an accountant’s report within the time limits prescribed in subsections (1) and (2)

SOLICITORS’ PRACTICE RULES

Rule 2B “Letterhead”

(After the firm has been given the opportunity to rectify the breach and has not done so):

- Failure to comply with mandatory requirements set out in subrule (2)
- Where a firm opts to state on its letterhead any of the matters set out in subrule (3), failure to satisfy the pre-conditions to do so

Rule 4A “Supervision of office”

- Breach of subrule (a) requiring a solicitor with a practising certificate to be in attendance at an office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a solicitor holding an unconditional practising certificate

Rule 4B “Control of employment of unqualified persons”

- Temporary breach of the ratio of unqualified person to solicitors in subrule (1) without having sought a waiver from the Council
- Breach of subrule (2) by employing an unqualified person who is also employed by another firm without Council approval
- Breach of subrule (4) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 5 “Particulars relating to firms”

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

Rule 5D “Steps to be taken in criminal matters”

- Breach of subrule (a) – failure to issue a confirmation letter to the client
- Breach of subrule (b) – failure to notify the client in writing of change in the information and obtain written consent
- Breach of subrule (c) – failure to deliver to deliver account to the client at the end of the case

- Breach of subrule (d) – failure to deliver receipt to client for fees or costs and disbursements
- Breach of subrule (e) – failure to deliver backsheet to counsel
- Breach of subrule (f) – payment to counsel without receipt of a fee note
- Breach of subrule (g) – failure to retain copies of documents for at least two years after completion

SOLICITORS (PROFESSIONAL INDEMNITY) RULES

- Failure to submit an accountant’s certificate under rule 8(1)(a)

CONTINUING PROFESSIONAL DEVELOPMENT RULES

- Failure to comply with rule 5 (provided that the breach has already been rectified within a very short period after the date for compliance with the Rules)

PRACTICE DIRECTIONS

PD B.1 “Solicitors’ Bill of Costs

- Failure to render an itemized bill to a client upon request

PD C.3 “Steps to be taken in criminal matters

- Breach of subparagraph (2) – failure to carry the confirmatory letter from the client when at court

PD D.2 “Signature of post”

- Breach of subparagraph (1) – failure to ensure letters in the course of professional practice are signed by an approved signatory

PD D.5 “Sharing an office and staff”

- Breach of subparagraph (4) – failure to have adequate signs in common areas

PD D.7 “Cessation of practice

- Breach of subparagraph (1) – failure to notify the Society 6 weeks prior to cessation date
- Breach of subparagraph (2) – failuer to appoint an agent

PD D.8 “Format of electronic communications

- Failure to comply with mandatory requirements set out in subparagraph (1)
- Breach of subparagraph (2) – issue of an e-mail by unapproved person

PD F.1 “Instructions to counsel”

- Breach of subparagraph (1) – failure to supply backsheet (see Solicitors’ Practice Rule 5D)

PD G. “Professional stationery”

- Breach of PD G.1(1) – failure to state the names of principals
- Breach of PD G.(1)(2) – failure to specify non-resident partners
- Breach of PD G.1A(1) – failure to state foreign lawyer’s jurisdiction

- Breach of PD G.2(1) – stating “PCLL” or similar on namecard

PD H.1 “Election addresses”

- Breach of subparagraph (2) – stating name or address of firm or advertising work as solicitor

FOREIGN LAWYERS PRACTICE RULES

Rule 5 “Business letters”

- Failure to comply with the mandatory requirements set out in subrules (1) or (2)

Rule 6” Supervision of office”

- Breach of subrule (a) or requiring a foreign lawyer to be in attendance at the office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a foreign lawyer holding an unconditional certificate of registration

Rule 7 “Sharing an office and staff”

- Breach of subrule (4) – failure to have adequate signs in common areas

Rule 8 “Control of employment of unqualified persons

- Temporary breach of subrule (1) without having sought a waiver from the Council
- Breach of subrule (3) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 9 “Reporting of particulars

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

VOLUME 1 OF “THE HONG KONG SOLICITORS’ GUIDE TO PROFESSIONAL CONDUCT”

Principle 13.09 “When an oath must not be administered”

- Administering an oath or affirmation or taking a declaration in proceeding or matter in which the solicitor or his firm is acting for any of the parties, or is otherwise interested

Principle 14.02 “Performance of undertakings”

- Breach of undertaking in conveyancing matters (provided that the breach has been rectified and is not continuing)

(B) 廢除句號而代以“；或”；

(iv) 加入——

“(c) 將有關事宜連同他認為適當的指示交回律師會或理事會重新考慮。”；

(d) 加入——

“(12) 凡高等法院首席法官根據第(11)款(a)段維持律師會或理事會的決定，或根據該款(b)段指示律師會發出執業證書，高等法院首席法官的決定即為最終決定。”。

101. 執業為律師的資格

第7(d)條現予修訂，廢除“的任何”而代以“並對他適用的”。

102. 律師紀律審裁團

第9條現予修訂——

(a) 在第(4)款中——

(i) 廢除“審裁團內的其中”；

(ii) 廢除“其他”；

(b) 加入——

“(6) 律師會可向審裁組召集人及在第(5)款所述情況下署理審裁組召集人職位的審裁組副召集人支付酬金。”。

103. 對律師、外地律師等行為操守的申訴

第9A條現予修訂——

(a) 加入——

“(1A) 儘管有第(1)款的規定，如有關的行為操守涉及指稱違反於理事會訂立的規則內訂明的——

(a) 本條例的條文；

(b) 由律師會發出的執業指引；或

(c) 《香港事務律師專業操守指引》所載的專業操守原則；

(B) by repealing the full stop and substituting “; or”;

(iv) by adding—

“(c) remit the matter to the Society or Council for reconsideration with such directions as he thinks fit.”;

(d) by adding—

“(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 (b) of that subsection, the decision of the Chief Judge shall be final.”.

101. Qualifications for practising as solicitor

Section 7(d) is amended by adding “that apply to him” after “73A”.

102. Solicitors Disciplinary Tribunal Panel

Section 9 is amended—

(a) in subsection (4)—

(i) by repealing “one of the solicitors on the Panel” and substituting “a solicitor”;

(ii) by repealing “of the other”;

(b) by adding—

“(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.”.

103. Complaint about conduct of solicitor, foreign lawyer, etc.

Section 9A is amended—

(a) by adding—

“(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,

而理事會認為有關事宜適宜由審裁組召集人根據第9AB條處理，則理事會可將該事宜呈交審裁組召集人，讓其於該條第(1)款所述條件獲得符合的情況下根據該條處理該事宜。

(1B) 理事會在考慮有關事宜是否適宜由審裁組召集人根據第9AB條處理時，可考慮以下因素——

- (a) 所指稱的違反事件是否蓄意；
 - (b) 作出所指稱的違反事件是否出於不誠實意圖；
 - (c) 所指稱的違反事件的嚴重程度；
 - (d) 理事會認為有關的任何其他因素。”；
- (b) 在第(2)款中，廢除“終審”而代以“高等”。

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;
 - (c) the gravity of the alleged breach;
 - (d) any other factor it considers relevant.”;
- (b) in subsection (2), by repealing “Chief Justice” and substituting “Chief Judge”.

104. 加入條文

現加入——

“9AB. 審裁組召集人處理某些申訴的權力

(1) 凡理事會根據第9A(1A)條向律師紀律審裁團的審裁組召集人呈交關乎某人的事宜，而該人按照於理事會訂立的規則內訂明的方式——

- (a) 承認對指稱違反訂明條文、執業指引或專業操守原則一事的法律責任；及
- (b) 同意該事宜由審裁組召集人根據本條處理，則審裁組召集人須處理該事宜。

(2) 審裁組召集人處理一項事宜的方式，是作出命令，規定有關的人在命令指明的時間內支付於理事會訂立的規則內就違反有關的訂明條文、執業指引或專業操守原則而訂明的定額罰款及理事會的定額調查費用。

(3) 定額罰款須撥入政府一般收入內。

(4) 審裁組召集人須簽署根據本條作出的命令，並將已簽署的命令的文本送交律師會秘書長存檔。

104. Section added

The following is added—

“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.

If the respondent does not agree to plead guilty during discussions with the prosecutor and subsequently pleads guilty, the matter cannot be dealt with under the fixed penalty system and the standard penalty and costs scale will no longer apply.

The Way Ahead

Amendments to the Legal Practitioners Ordinance and a new set of Rules are required to implement the proposed new system. The Legal Policy Division of the Department of Justice is preparing to take the Council's

proposal forward this year by legislative amendment.

*Ms Belinda Macmahon
Assistant Director,
Regulation and Guidance,
The Law Society of Hong Kong*

另擇紀律程序簡介

引言

根據《法律執業者條例》(第159章)第9A條,律師會理事會在會員紀律方面的權力限於接取申訴、就申訴進行調查,以及在適當的情況下將申訴呈交予律師紀律審裁組(以下簡稱「審裁組」)進行聆訊。告誡或譴責律師的權力,乃歸審裁組所有,故此理事會所能做的,除了向有關律師發出遺憾信或反對信外,便只有將申訴轉交審裁組進行全面聆訊。將個案轉交審裁組的做法不但費時,而且可能涉及巨額費用,更不一定適用於所有個案。

理事會曾就上述問題提出建議,而首席法官已因應建議同意設立一套新的另擇程序,作為常規紀律程序的「副手」,以及填補理事會在發出遺憾信或反對信與轉交個案至審裁組之間的權力「空檔」。在這套新程序下,假如某個案符合下列條件:

- 一、答辯人的違反行為涉及某種指定罪行;
- 二、理事會和答辯人均同意以這種「簡易」方式處理該違反行為;
- 及
- 三、答辯人承認該違反行為,

則答辯人將要就每項違反行為支付預先確定的「標準」罰款額以及最高可達某個設定限額的訟費(另見下文),而該個案將不被呈交審裁組進行聆訊。

理事會認為,現行紀律程序存在著延誤和訟費高昂的問題,就後者而言,答辯人所要承擔的訟費更往往遠高於審

裁組所施加的罰則。理事會相信建議中的新程序將大大有助解決上述問題。

擴大審裁組召集人的權力

為配合新程序的實施,審裁組召集人(及其助手)將額外獲賦予下列權力:

- 一、在雙方同意下以簡易方式處理標準違反紀律個案,毋須召開審裁組;
- 二、就該等違反行為按照既定罰則施加標準罰款,就此而言,建議中的標準罰則為每項違反行為罰款一萬元;
- 三、下令答辯人支付早前研訊或調查個案的費用及與之相關的費用,就此而言,建議中的最高罰款額為每項違反行為一萬五千元;及
- 四、安排將有關命令送交律師會秘書長存檔,並容許任何受影響的人士查閱該等命令。

在建議下,審裁組召集人(及其助手)在執行上述法定職能期間將獲支付酬金。

適用標準罰則的違反紀律行為

有關的附屬法例將詳列那些可透過建議中的簡易程序處理的「標準罰則違反紀律行為」。不過,即使某項違反行為出現在該列表內,這不一定代表承認控罪的答辯人將只受到「標準」懲罰。律師會理事會將率先享有酌情權決定某項違反行為是否可透過簡易程序處理,而答辯人然後亦必須同意

以該程序處理個案。

舉例說,假如理事會認為某項「標準罰則」違反行為(或錯失)並不是蓄意作出,而只是因失察而造成的話,理事會便可同意藉簡易程序處理。反之,假如理事會認為違反行為的性質嚴重,因而不同意藉簡易程序處理個案的話,該個案仍將如常被轉交審裁組進行聆訊,在這情況下,答辯人當然可選擇替自己辯護。

有關程序

在建議中的制度下,答辯人將獲送達申訴文件,內容包括控罪詳情和案情摘要,而答辯人可在指定期間與檢控人員討論有關申訴、案情及(假如答辯人認罪並同意按照定額罰款基礎處理個案的話)適用的罰則。

在建議下,只有當答辯人與檢控人員進行討論期間認罪時,定額罰款程序才會適用;假如答辯人在上述討論過程中不認罪但隨後認罪,定額罰款程序以及「標準」罰款和訟費將不適用。

新程序何時執行?

實施上述新程序前,必須先修訂《法律執業者條例》及制定一套新規則。律政司法律政策科將於本年內進行有關法例修訂方面的預備工作。

萬珮琳
香港律師會
條例及指導部副總監



THE
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 OF HONG KONG
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2846 0523

17 November 2003

Mrs Percy Ma
 Clerk to LegCo Panel on administration of
 Justice and Legal Services
 Legislative Council
 Legislative Council Building
 8 Jackson Road
 Central
 Hong Kong

Via Fax – 2509 9055
 & Via Post
 (Pages in total: 2/)

Dear Mrs Ma,

Re : **Summary Disposal of Complaints (Solicitors) Rules**

Please find enclosed for the assistance of the Panel an advanced copy of the Summary Disposal of Complaints (Solicitors) Rules ("Rules"), which will be gazetted on 21 November 2003.

The Rules are introduced to implement a new alternative disciplinary system under which a fixed penalty will be imposed upon solicitors who plead guilty to certain disciplinary offences without the necessity to proceed to a full hearing. The necessary amendments to the Legal Practitioners Ordinance (contained in the Statute Law (Miscellaneous Provisions) Ordinance (Ordinance No.23 of 2002)) were gazetted in July 2002. They are included in sections 103(a), 104, 105 and 111 of the Statute Law (Miscellaneous Provisions) Ordinance, which shall come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette, pending the passing of the new set of subsidiary rules to implement the alternative disciplinary procedures.

To summarise, the amendments to the Ordinance are:

- (a) Alternative disciplinary procedures
- (i) New section 9A(1A) sets out the scope of the matters that may be dealt with under the new alternative disciplinary procedures whereby a matter can be disposed of by imposition of a fixed penalty if certain conditions are met.

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President	Vice-Presidents	Council Members				Secretary General
Ip Shing Hing	Anson K.C. Kan Michael J. Lintern-Smith	Denis G. Brock Anthony W.K. Chow Junius K.Y. Ho Lester G. Huang	Andrew Jeffries Alex T.H. Lai Amy Y.K. Liu Peter C.L. Lo	Billy W.Y. Ma Kenneth S.Y. Ng Timothy C. Parkes Sylvia W.Y. Siu	Herbert H.K. Tsoi Wong Kwai Hun Cecilia K.W. Wong	Patrick R. Moss

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- (ii) New section 9A(1B) sets out the factors that may be taken into account by the Society when considering whether a matter is suitable for disposal by the Tribunal Convenor under the new procedures.
 - (iii) New section 9AB sets out the power of the Tribunal Convenor to dispose of matters under the new procedures.
 - (iv) Amendments have been made to sections 9B(1) and (1A) to clarify that if the matter is to be disposed of by the Tribunal Convenor under the new procedures, the Tribunal Convenor shall not be required to constitute a Tribunal.
- (b) Enabling provisions

The new sub-section 73(1)(caa) and (cab) are added to provide the Council with the necessary power to make rules in relation to the new alternative disciplinary procedures.

The Rules set out the procedure that will be adopted when the Council decides to submit a matter to the Tribunal Convenor for disposal under the alternative disciplinary procedures. The procedure is summarised as follows:

- (a) The Council representative shall send to the relevant person a complaint sheet, a summary of facts and a notice explaining the applicable procedures and setting out the amounts of the fixed penalty and fixed investigation costs if the matter is disposed of under the summary procedures.
- (b) The relevant person has 21 days to consider whether he wishes to discuss the matter with the Council representative.
- (c) If the relevant person agrees to enter into discussion with the Council representative, then they will have 21 days to discuss and agree in writing the facts of the case.
- (d) The Council representative will then sign a statement of agreed facts on behalf of the Council and send it to the relevant person, who has 14 days to sign and return it together with his indication that he admits liability and agrees to have the matter disposed of under the new summary procedures.
- (e) The Council will then make a submission to the Tribunal Convenor stating that the conditions to have the matter disposed of under the new procedures have been satisfied. It will also submit an affidavit exhibiting the signed statement of agreed facts.
- (f) After receiving the submission, the Tribunal Convenor shall make an order and send it to the relevant person.

The Law Society of Hong Kong

- (g) The offences that may be dealt with by the summary procedures and the fixed amounts of penalty and investigation costs are all set out in the Rules. A list briefly explaining the nature of each of the offences covered by the Rules is also enclosed.

Please do not hesitate to let me know should you require further information.

Yours sincerely,



Heidi Chu
Director
Standards and Development

c.c. Mr Patrick Moss, Secretary General

Encl
72650

**SUMMARY DISPOSAL OF COMPLAINTS (SOLICITORS)
RULES**

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SUMMARY DISPOSAL OF COMPLAINTS (SOLICITORS) RULES

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

PART 1

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of section 111 of the Statute Law (Miscellaneous Provisions) Ordinance 2002 (23 of 2002).

2. Interpretation

In these Rules, unless the context otherwise requires -

“affidavit” (誓章) includes affirmation;

“Council representative” (理事會代表) means a solicitor or counsel appointed by the Council to represent it in the handling of a matter regarding the conduct of a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer;

“fixed investigation cost” (定額調查費用), in relation to a scheduled item, means the Council's fixed investigation cost specified opposite the item in column 4 of the Schedule;

“fixed penalty” (定額罰款), in relation to a scheduled item, means the fixed penalty specified opposite the item in column 3 of the Schedule;

“relevant person” (有關人士) means a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer, to whom a complaint sheet has been sent under section 4;

“scheduled item” (表列項目) means a provision, practice direction or principle of professional conduct specified in column 2 of the Schedule;

“Tribunal Convenor” (審裁組召集人) means the Tribunal Convenor appointed under section 9(4) of the Ordinance.

3. Provisions prescribed for purposes of section 9A(1A) of Ordinance

The provisions, practice directions and principles of professional conduct specified in column 2 of the Schedule are prescribed for the purposes of section 9A(1A) of the Ordinance.

PART 2

PROCEDURES BEFORE SUBMISSION OF MATTER TO TRIBUNAL CONVENOR

4. Council representative to send complaint sheet when Council decides to submit matter to Tribunal Convenor

(1) If the Council decides to submit a matter regarding the conduct of a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer to the Tribunal Convenor under section 9A(1A) of the Ordinance, the Council representative shall send to the solicitor, foreign lawyer, trainee solicitor or employee a complaint sheet stating the particulars of the complaint together with a summary of facts relating to the conduct being complained of.

(2) The complaint sheet shall be sent together with a notice -

- (a) stating that the relevant person's conduct involves an alleged breach of a scheduled item and that the Council has decided to submit the matter to the Tribunal Convenor under section 9A(1A) of the Ordinance and that accordingly -

- (i) if the relevant person admits liability for the alleged breach and agrees to the matter being disposed of by the Tribunal Convenor under section 9AB of the Ordinance, the matter shall be so disposed of by the Tribunal Convenor and the relevant person shall be only liable to pay a fixed penalty and a fixed investigation cost; and
 - (ii) if the relevant person does not admit liability for the alleged breach or does not agree to the matter being disposed of by the Tribunal Convenor, the matter shall be disposed of by the Solicitors Disciplinary Tribunal; and
- (b) requiring the relevant person to notify the Council representative in writing within 21 days after receiving the complaint sheet whether or not the relevant person wishes to discuss the matter with the Council representative.
- (3) The amounts of the fixed penalty and the fixed investigation cost referred to in subsection (2)(a)(i) shall be specified in the notice.

5. Revocation of decision by Council

(1) Notwithstanding the sending of a complaint sheet to a relevant person under section 4, the Council may at any time within 21 days thereafter revoke its decision to submit the matter to the Tribunal Convenor under section 9A(1A) of the Ordinance.

(2) Upon revoking its decision, the Council shall forthwith notify the relevant person in writing of this fact.

6. Discussion of complaint

Unless the Council has revoked its decision to submit the matter to the Tribunal Convenor in accordance with section 5, if a relevant person notifies the

Council representative that he wishes to discuss the matter, the Council representative and the relevant person have a period of 21 days beginning on the day after the receipt of the notification by the Council representative to discuss and agree in writing the facts of the case.

7. Amendment of complaint sheet, etc.

At the end of the period referred to in section 6, if the Council representative considers that the agreed facts are sufficient to establish the liability of the relevant person, he -

- (a) may amend the complaint sheet, if necessary; and
- (b) shall prepare a statement of the agreed facts and sign the statement on behalf of the Council,

and send the complaint sheet or amended complaint sheet (as appropriate) and the statement of agreed facts to the relevant person.

8. Agreeing to disposal of matter by Tribunal Convenor

If a relevant person wishes to have a matter disposed of by the Tribunal Convenor under section 9AB of the Ordinance, he shall, within 14 days after receiving the statement of agreed facts, sign and return the statement to the Council representative and indicate in writing that he admits liability for the breach of the scheduled item as alleged and agrees to the matter being disposed of by the Tribunal Convenor under that section.

PART 3

SUBMISSION OF MATTER TO AND DISPOSAL OF MATTER BY TRIBUNAL CONVENOR

9. Application of Part 3

(1) This Part applies in relation to a matter regarding the conduct of a relevant person if the relevant person -

- (a) admits liability for the breach of the scheduled item as alleged;
- (b) agrees to the matter being disposed of by the Tribunal Convenor under section 9AB of the Ordinance; and
- (c) signs and returns the statement of agreed facts,

within the time prescribed in section 8.

(2) In any other case, the Solicitors Disciplinary Tribunal Proceedings Rules (Cap. 159 sub. leg.) apply but any information obtained by the relevant person or the Council in the course of or as a result of the discussion of the matter under section 6 may not be used by the relevant person or the Council as evidence in any proceedings against the relevant person under those Rules unless the party against whom the information is proposed to be used consents in writing to the information being so used.

10. Submission of matter to Tribunal Convenor

(1) A submission to the Tribunal Convenor to dispose of a matter under section 9AB of the Ordinance shall -

- (a) be in writing and signed on behalf of the Council by the Secretary General of the Society or by such other person as the Council may from time to time appoint;
- (b) state that the conditions mentioned in subsection (1) of that section that have to be satisfied before the Tribunal

Convenor can dispose of the matter have been satisfied;
and

- (c) be accompanied by an affidavit sworn by the Secretary General of the Society or by such other person as the Council may from time to time appoint.

(2) The affidavit referred to in subsection (1)(c) shall state -

- (a) the capacity of the deponent;
- (b) the deponent's means of knowledge of the facts; and
- (c) the pertinent information about the relevant person,

and shall exhibit the statement of agreed facts signed by the Council and the relevant person.

(3) The Council shall, at the same time as it makes a submission to the Tribunal Convenor, send a copy of the submission to the relevant person.

11. Sending order to relevant person

(1) As soon as practicable after receiving a submission, the Tribunal Convenor shall make an order under section 9AB(2) of the Ordinance.

(2) The Tribunal Convenor shall send the order to the relevant person within 7 days of its making.

PART 4

GENERAL

12. Correction of errors in orders

(1) Where there is a clerical error in an order made under section 9AB(2) of the Ordinance, the Tribunal Convenor may, on his own initiative or on the application of the Council or the relevant person against whom the order was made, correct the error in the order and may for that purpose require the relevant person to produce the order to him for correction.

(2) The Tribunal Convenor shall file a copy of an amended order with the Secretary General of the Society.

13. Sending documents

(1) Any document to be sent (however described) to any person under these Rules is regarded as duly sent if it is –

- (a) delivered to that person personally; or
- (b) left at or sent by registered post to the last known place of business or abode of that person.

(2) Where the person to whom a document is to be sent is a solicitor or a foreign lawyer and that person either agrees to accept service through a document exchange or states his document exchange number on his letterhead, the document is also regarded as duly sent if it is left at that document exchange or at a document exchange that transmits documents every business day to that document exchange. A document so left is regarded to have been received on the day on which it is left.

(3) In this section, "business day" (工作天) and "document exchange" (文件轉遞處) have the meanings respectively assigned to them by Order 65, rule 5 of the Rules of the High Court (Cap. 4 sub. leg.).

SCHEDULE

[ss. 2 & 3]

SCHEDULED ITEMS

Legal Practitioners Ordinance (Cap. 159)

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Section 8(1)	10,000	15,000

Solicitors' Practice Rules (Cap. 159 sub. leg.)

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Rule 2B(2)	10,000	15,000
2.	Rule 2B(3)	10,000	15,000
3.	Rule 4A(a)	10,000	15,000
4.	Rule 4A(b)	10,000	15,000
5.	Rule 4B(1)	10,000	15,000
6.	Rule 4B(2)	10,000	15,000
7.	Rule 4B(4)	10,000	15,000
8.	Rule 5(1)	10,000	15,000
9.	Rule 5(1A)	10,000	15,000
10.	Rule 5(2)	10,000	15,000
11.	Rule 5(3)	10,000	15,000
12.	Rule 5D(a)	10,000	15,000
13.	Rule 5D(b)	10,000	15,000
14.	Rule 5D(c)	10,000	15,000
15.	Rule 5D(d)	10,000	15,000
16.	Rule 5D(e)	10,000	15,000
17.	Rule 5D(f)	10,000	15,000
18.	Rule 5D(g)	10,000	15,000

**Solicitors (Professional Indemnity) Rules
(Cap. 159 sub. leg.)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Rule 8(1)(a)	10,000	15,000

Foreign Lawyers Practice Rules (Cap. 159 sub. leg.)

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Section 5(1)	10,000	15,000
2.	Section 5(2)	10,000	15,000
3.	Section 6(a)	10,000	15,000
4.	Section 6(b)	10,000	15,000
5.	Section 7(4)	10,000	15,000
6.	Section 8(1)	10,000	15,000
7.	Section 8(3)	10,000	15,000
8.	Section 9(1)	10,000	15,000
9.	Section 9(1A)	10,000	15,000
10.	Section 9(2)	10,000	15,000
11.	Section 9(3)	10,000	15,000

**Continuing Professional Development Rules
(Cap. 159 sub. leg.)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Section 5(1)	10,000	15,000
2.	Section 5(2)	10,000	15,000

Practice Directions 1990 issued by the Society

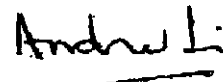
Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Practice Direction B1	10,000	15,000
2.	Practice Direction C3, paragraph (2)	10,000	15,000
3.	Practice Direction D2, paragraph (1)	10,000	15,000
4.	Practice Direction D5, paragraph (4)	10,000	15,000
5.	Practice Direction D7, paragraph (1)	10,000	15,000
6.	Practice Direction D7, paragraph (2)	10,000	15,000

7.	Practice Direction D8, paragraph (1)	10,000	15,000
8.	Practice Direction D8, paragraph (2)	10,000	15,000
9.	Practice Direction F1, paragraph (1)	10,000	15,000
10.	Practice Direction G1, paragraph (1)	10,000	15,000
11.	Practice Direction G1, paragraph (2)	10,000	15,000
12.	Practice Direction G1A, paragraph (1)	10,000	15,000
13.	Practice Direction G2, paragraph (1)	10,000	15,000
14.	Practice Direction H1, paragraph (2)	10,000	15,000


The Hong Kong Solicitors' Guide to Professional Conduct

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

Approved this 23rd day of October 2003.


Chief Justice

Made this 13th day of November 2003.


Ip Shing Hing


Anson K.C. Kan

Denis G. Brock

Anthony W.K. Chow

Junius K.Y. Ho

Lester G. Huang

Amy Y.K. Liu

Peter C.L. Lo

Billy W.Y. Ma

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Timothy C. Parkes

Herbert H.K. Tsoi

Wong Kwai Huen

Cecilia K.W. Wong

Explanatory Note

The object of these Rules is to provide for the practice and procedure to be followed in connection with the disposal of a complaint against a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer by the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel ("Tribunal Convenor") under section 9AB of the Legal Practitioners Ordinance (Cap. 159).

2. Section 3 of the Rules prescribes provisions, practice directions and principles of professional conduct for the purposes of section 9A(1A) of that Ordinance. Where the conduct of a person being complained of involves a breach of any such provisions, practice directions and principles, the Council of The Law Society of Hong Kong ("Council") may submit the complaint to the Tribunal Convenor for disposal.

3. Sections 4 to 8 set out the procedures to be followed before a complaint is formally submitted to the Tribunal Convenor. These include, inter alia, the sending of a complaint sheet and summary of facts to the person whose conduct is being complained of ("relevant person"), the discussion between the representative of the Council and the relevant person to agree on the facts, the preparation of a statement of agreed facts and the relevant person giving his written consent to the disposal of the complaint by the Tribunal Convenor.

4. Sections 9 to 11 deal with the submission of complaints by the Council to the Tribunal Convenor and the sending of orders made by the Tribunal Convenor to relevant persons.

5. Sections 12 and 13 deal with the correction of errors in orders and the sending of documents.

**OFFENCES WHICH MAY BE DEALT WITH
UNDER THE DISPOSAL OF COMPLAINTS (SOLICITORS) RULES**

LEGAL PRACTITIONERS ORDINANCE

Section 8(1) "Accountant's reports"

- Failure to submit an accountant's report within the prescribed time limit

SOLICITORS' PRACTICE RULES

Rule 2B "Letterhead"

- Failure to comply with mandatory requirements on what should be stated on a firm's letterhead, as set out in subrule (2)
- Where a firm opts to state on its letterhead any of the matters set out in subrule (3), failure to satisfy the pre-conditions to do so

Rule 4A "Supervision of office"

- Breach of subrule (a) requiring a solicitor with a practising certificate to be in attendance at an office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a solicitor holding an unconditional practising certificate

Rule 4B "Control of employment of unqualified persons"

- Breach of the ratio of unqualified person to solicitors in subrule (1) without having sought a waiver from the Council
- Breach of subrule (2) by knowingly employing an unqualified person who is also employed by another firm without Council approval
- Breach of subrule (4) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 5 "Particulars relating to firms"

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

Rule 5D "Steps to be taken in criminal matters"

- Breach of subrule (a) - failure to issue a confirmation letter to the client
- Breach of subrule (b) - failure to notify the client in writing of change in the information and obtain written consent
- Breach of subrule (c) - failure to deliver an account to the client at the end of the case
- Breach of subrule (d) - failure to deliver receipt to client for fees or costs and disbursements
- Breach of subrule (e) - failure to deliver backsheets to counsel

- Breach of subrule (f) - payment to counsel without receipt of a fee note
- Breach of subrule (g) - failure to retain copies of documents for at least two years after completion

SOLICITORS (PROFESSIONAL INDEMNITY) RULES

- Failure to submit an accountant's certificate under rule 8(1)(a)

CONTINUING PROFESSIONAL DEVELOPMENT RULES

- Failure to comply with the requirement to accumulate sufficient continuing professional development accreditation points, as set out in rule 5

FOREIGN LAWYERS PRACTICE RULES

Rule 5 "Business letters"

- Failure to comply with the mandatory requirements on what should be stated on the firm's letterhead, as set out in subrules (1) or (2)

Rule 6 "Supervision of office"

- Breach of subrule (a) requiring a foreign lawyer to be in attendance at the office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a foreign lawyer holding an unconditional certificate of registration

Rule 7 "Sharing an office and staff"

- Breach of subrule (4) - failure to have adequate signs in common areas

Rule 8 "Control of employment of unqualified persons"

- Breach of the ratio between persons who are not foreign lawyers and resident partners and full-time foreign lawyers, as set out in subrule (1) without having sought a waiver from the Council
- Breach of subrule (3) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 9 "Reporting of particulars"

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

PRACTICE DIRECTIONS

PD B.1 "Solicitors' Bill of Costs"

- Failure to render an itemized bill to a client upon request

PD C.3 "Steps to be taken in criminal matters"

- Breach of subparagraph (2) - failure to carry the confirmatory letter from the client when at court

PD D.2 "Signature of post"

- Breach of subparagraph (1) - failure to ensure letters in the course of professional practice are signed by an approved signatory

PD D.5 "Sharing an office and staff"

- Breach of subparagraph (4) - failure to have adequate signs in common areas

PD D.7 "Cessation of practice"

- Breach of subparagraph (1) - failure to notify the Society 6 weeks prior to cessation date
- Breach of subparagraph (2) - failure to appoint an agent

PD D.8 "Format of electronic communications"

- Failure to comply with mandatory requirements on what should be stated on electronic communications, set out in subparagraph (1)
- Breach of subparagraph (2) - issue of an e-mail by unapproved person

PD F.1 "Instructions to counsel"

- Breach of subparagraph (1) - failure to supply backsheet (see Solicitors' Practice Rule 5D)

PD G. "Professional stationery"

- Breach of PD G.1 (1) - failure to state the names of principals on business letters
- Breach of PD G.1 (2) - failure to specify non-resident partners on business letters
- Breach of PD G.1A (1) - failure to state foreign lawyer's jurisdiction
- Breach of PD G.2 (1) - stating "PCLL" or similar "qualification" on name card

PD H.1 "Election addresses"

- Breach of subparagraph (2) - stating name or address of firm or advertising work as solicitor during election to public office

VOLUME 1 OF "THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT"

Principle 13.09 "When an oath must not be administered"

- Administering an oath or affirmation or taking a declaration in a proceeding or matter in which the solicitor or his firm is acting for any of the parties, or is otherwise interested

Principle 14.02 "Performance of undertakings"

- Breach of undertaking in conveyancing matters