

**CODE OF CONDUCT  
OF THE BAR OF  
THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION**

**Adopted by the Hong Kong Bar Association on 14 November 2018**

**Effective from 15 November 2018**

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Hong Kong Bar Association  
LG2, High Court  
38 Queensway  
Hong Kong

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## **CHAPTER 1**

### **PRELIMINARY**

- 1.1 Respect for and upholding the rule of law and for the freedom of the individual citizen depend to a large extent on the maintenance of high standards by all who practise in the Courts.
- 1.2 This Code sets out the requirements for practice as a barrister in Hong Kong and the rules and standards of conduct applicable to barristers in Hong Kong which are appropriate in the interests of justice and the administration of justice.
- 1.3 This edition of the Code was adopted by the Bar in the Extra-ordinary General Meeting on 14 November 2018 and came into force on 15 November 2018.
- 1.4 In respect of anything done or omitted to be done or otherwise arising before 15 November 2018:-
  - (a) this Code does not apply; and
  - (b) the Code of Conduct in force at the relevant time shall, notwithstanding paragraph 1.3 above, apply as if this Code had not been adopted by the Bar.
- 1.5 This Code includes the Annexes and the footnotes.
- 1.6 Amendments and additions to this Code may be made by the Bar in General Meeting or alternatively by resolution of the Bar Council, which shall be operative upon such date as the resolution shall appoint, but may be revoked or amended by the Bar in General Meeting. Amendments and additions will be published from time to time in such manner as the Bar Council may determine.
- 1.7 Circulars regarding the conduct of barristers and pupils from time to time issued by the Bar Council remain available for guidance.

## CHAPTER 2

### DEFINITIONS AND INTERPRETATION

- 2.1 This Code is not, and should not be read as if it were, an exhaustive code of conduct for barristers. Other standards for, requirements of and sanctions on the conduct of barristers are also found, for example, in the Ordinance and its subsidiary legislation and in the general law.
- 2.2 In this Code (including its Annexes and footnotes), unless the context otherwise requires:-
- (a) “ALE Programme” means the programme of compulsory legal education organised by the Bar Council under section 3 of the B(ALER)R and “ALE course” and “ALE points” respectively mean a course provided, authorised, approved or accredited by the Bar Council under section 3(2)(a), (b), (c) and (d) of the B(ALER)R and the points awarded to a pupil for the satisfactory completion of any such course;
  - (b) “approved pupillage” means a period of approved pupillage mentioned in rule 9 of the B(Q)R or section 9 of the B(QAP)R;
  - (c) “Association” means the Bar Association of the Hong Kong Special Administrative Region;
  - (d) “B(A)R” mean the Barristers (Admission) Rules (Cap 159AA);
  - (e) “B(ALER)R” mean the Barristers (Advanced Legal Education Requirement) Rules (Cap 159AB);
  - (f) “B(Q)R” means the Barristers (Qualification) Rules (Cap 159E);
  - (g) “B(QAP)R” means the Barristers (Qualification for Admission and Pupillage) Rules (Cap 159AC);
  - (h) “Bar” means the Bar of the Hong Kong Special Administrative Region;
  - (i) “Bar Council” means the Council of the Association as constituted from time to time;



- (j) “barrister” means a person who is enrolled as a barrister on the roll of barristers kept by the Registrar of the High Court of the Hong Kong Special Administrative Region in accordance with section 29 and, where the context requires, a person admitted under section 27(4) on an *ad hoc* basis for the purposes of a specific case or cases;
- (k) “Barristers Disciplinary Tribunal” means a Barristers Disciplinary Tribunal constituted under section 35A;
- (l) “breach of proper professional standards” bears the meaning given in paragraphs 4.3 and 4.4;
- (m) “brief” means written instruction to a practising barrister to appear as an advocate before a Court;
- (n) “Chairman” and “Vice-Chairman/Chairmen” refer to the Chairman and Vice-Chairman/Chairmen of the Association and “Chairman” includes the Acting Chairman, if any;
- (o) “chambers” and “professional chambers” bears the meaning given in paragraph 5.10;
- (p) “Chief Judge” means the Chief Judge of the High Court of the Hong Kong Special Administrative Region;
- (q) “Court” and “Courts” include any court or tribunal or any other person or body whether sitting in public or private before whom a practising barrister appears or may appear as an advocate;
- (r) “Direct Access Rules” means:-
  - (i) unless otherwise agreed between the Bar Council and a particular Recognised Direct Access Body as set out in sub-paragraph (ii) hereof, the rules set out in Annex 5 subject to and in accordance with which a Qualified Instructing Member or Officer of a Recognised Direct Access Body may directly instruct a practising barrister without the intervention of a solicitor for Direct Access work; or
  - (ii) the rules set out in Annexes 6A and 6B subject to and in accordance with which a Qualified Instructing Member or Officer of the following Recognised Direct Access Bodies may directly instruct a practising barrister without the intervention of a solicitor for Direct Access work:

- (1) Annex 6A: the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators or such other body of arbitrators as may be recognised by the Bar Council for Direct Access work and as specified in Annex 4; and
- (2) Annex 6B: the Taxation Institute of Hong Kong;
- (s) “Direct Access work” means work undertaken by a practising barrister pursuant to a brief or instructions delivered by a Qualified Instructing Member or Officer of a Recognised Direct Access Body without the intervention of a solicitor in accordance with the Direct Access Rules;
- (t) “Discipline Committee” means the Standing Committee on Discipline of the Bar Council;
- (u) “discrimination” means discrimination as defined under the applicable anti-discrimination legislation;
- (v) “employed barrister” is a barrister who, under a contract of employment, provides legal services exclusively to his employer;
- (w) “foreign lawyer” means a person who is qualified to practise and who is practising wherever in a system of law other than Hong Kong law, including but not limited to one registered as a foreign lawyer under Part IIIA of the Ordinance and practising as such in Hong Kong;
- (x) “harassment” means harassment as defined under the applicable anti-discrimination legislation;
- (y) “instructions” means instructions or directions in whatever form (including a brief) given to a practising barrister to supply legal services whether in a contentious or non-contentious matter and “instructed” shall have a corresponding meaning;
- (z) “legal service” or “legal services” include legal advice, representation and drafting or settling any pleading, witness statement, affidavit or other legal document but does not include:
  - (i) sitting as a judge or arbitrator;
  - (ii) acting as a mediator;

- (aa) “limited practising certificate” means a certificate issued by the Bar Council under section 30 to a person who is qualified to practise as a barrister to a limited extent under section 31(2);
- (ab) “Master Policy” means the Master Policy effected by the Association for and on behalf of its members for their insurance against claims for professional negligence arising out of their practice as barristers;
- (ac) “mediation” refers to the alternative dispute resolution process whereby the parties to a dispute appoint a neutral person (mediator) to assist them in the resolution of their dispute;
- (ad) “non-practising barrister” is a barrister who is neither a practising barrister nor an employed barrister;
- (ae) “Ordinance” means the Legal Practitioners Ordinance (Cap 159);
- (af) “partner” means a person who is or is held out as a partner in an unincorporated firm;
- (ag) “partnership” means an unincorporated partnership, and includes any unincorporated firm in which persons are or are held out as partners;
- (ah) “practising barrister” is:
  - (i) a barrister who
    - (1) has been admitted to practise in Hong Kong generally;
    - (2) is entitled, and holds himself out as willing, to appear in a Court on behalf of a client or to give legal advice or services to a client<sup>1</sup>; and
    - (3) is not an employed barrister; or
  - (ii) a foreign lawyer who has been admitted as a barrister on an *ad hoc* basis for the purposes of a specific case or cases under section 27(4);

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<sup>1</sup> By way of example, one holds himself out as willing to appear in a Court on behalf of a client or to give legal advice or services to a client by keeping chambers or by being described or included as a member in chambers’ literature. See Circular No.110/12.

- (ai) “practising certificate” means a certificate issued by the Bar Council under section 30;
- (aj) “professional misconduct” bears the meaning given in paragraphs 4.2, 4.4, 4.8 and 4.9;
- (ak) “Prosecuting Counsel” means a practising barrister prosecuting on fiat;
- (al) “pupil” means a person serving a period of approved pupillage mentioned in rule 9 of the B(Q)R or section 9 of the B (QAP)R;
- (am) “Pupillage Committee” means the Standing Committee on Pupillage and Limited Practice of the Bar Council;
- (an) “Qualified Instructing Member or Officer” means a member or officer of a Recognised Direct Access Body who is agreed between the Bar Council and the body as being entitled to directly instruct a practising barrister without the intervention of a solicitor for Direct Access work in accordance with the Direct Access Rules and “Instructing Member or Officer” means such a Qualified Instructing Member or Officer so instructing counsel;
- (ao) “Recognised Direct Access Body” means a professional or statutory body which has been approved by the Bar Council for the purposes of Direct Access work under paragraph 5.18(a) and as set out in Annex 4;
- (ap) “Senior Counsel” means a barrister appointed as such under section 31A;
- (aq) “solicitor” means a person who is enrolled as a solicitor on the roll of solicitors kept by the Registrar of the High Court of the Hong Kong Special Administrative Region under section 5 and holding a valid practising certificate issued to him under section 6;
- (ar) words importing the singular number include the plural, and *vice versa*;
- (as) words importing the masculine gender include the feminine;
- (at) references to numbered sections are to sections of the Ordinance;
- (au) references to numbered chapters, paragraphs, annexes and footnotes are to the chapters, paragraphs, annexes and footnotes of this Code; and

- (av) references to numbered circulars are to circulars from time to time issued by the Bar Council to its members.
  
- 2.3 The general provisions of this Code should not be read or applied in a more limited way than would have been so by reason of any particular or illustrative provisions.
  
- 2.4 The headings in this Code shall be read as part of this Code, but shall not be used so as to read or apply any provisions of this Code in a more limited way than would have been so if the headings were not part of this Code.

## CHAPTER 3

### APPLICATION

- 3.1 The provisions of this Code apply to and bind:-
- (a) every barrister whenever called to the Bar in Hong Kong (whether or not he is in practice and whether or not he is admitted to practise generally or on an *ad hoc* basis for the purposes of a specific case or cases), except where a provision is expressly or by necessary implication applicable only to a specific type of barrister; and
  - (b) every pupil whether or not he has been admitted as a barrister.
- 3.2 Every barrister whenever called to the Bar, whether in practice or not and whether or not he is admitted to practise generally or on an *ad hoc* basis for the purposes of a specific case or cases, and every pupil, whether or not he has been admitted as a barrister, should uphold at all times the standards set out in this Code, and the dignity and high standing of the profession of barrister.
- 3.3 A barrister appearing as an advocate or providing legal services outside Hong Kong shall:-
- (a) observe the rules of professional conduct, ethics and etiquette applicable to advocates in the jurisdiction in which he appears or provides legal services; and
  - (b) subject to sub-paragraph (a) hereof, otherwise remain bound by this Code.
- 3.4 The Bar Council shall have the power to exempt a barrister or a class of barristers from observing any part or parts of this Code in such circumstances, to such extent and subject to such conditions (if any) as the Bar Council may consider fit.
- 3.5 The Bar Council has no jurisdiction over the conduct of:-
- (a) barristers' clerks or employees; or
  - (b) interns or students employed or working in barristers' chambers.

However, a barrister is responsible for any acts or omissions by his clerk or any employee, intern or student when acting on his behalf.

## CHAPTER 4

### DISCIPLINE

4.1 It is the duty of every barrister (whether or not he is in practice and whether or not he is admitted to practise generally or on an *ad hoc* basis for the purposes of a specific case or cases) and every pupil (whether called to the Bar or not):-

- (a) to comply with:-
  - (i) the provisions of this Code;
  - (ii) the provisions of the Ordinance and the subsidiary legislation thereunder which are applicable to barristers;
  - (iii) all other standards for, requirements of and sanctions on the conduct of barristers, wherever found; and
  - (iv) the declarations and undertakings (if any) which he made or gave on his call to the Bar;
- (b) not to engage in conduct (whether in pursuit of his profession or otherwise<sup>2</sup>) which is:-
  - (i) dishonest or otherwise discreditable to a barrister;
  - (ii) likely to bring the profession of barrister into disrepute or otherwise diminish public confidence in the profession of barrister; or
  - (iii) prejudicial to the administration of justice or otherwise likely to diminish public confidence in the administration of justice;
- (c) to observe the ethics and etiquette of his profession; and

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<sup>2</sup> The improper use by a barrister of his status as a barrister outside his professional activities may be discreditable to a barrister or may bring the profession into disrepute or diminish the public confidence in the profession. For example, when a barrister finds himself involved in a personal dispute, he should not seek to use his status as a barrister in an attempt to gain an advantage over, or put pressure on, the other party but should, for instance, avoid the use of the title of barrister in corresponding or otherwise dealing with the other party to the dispute. For this reason, chambers letterhead, notepaper or email address which suggest that one is a barrister should not be used. See Circular No.034/11.

- (d) to be competent in all his professional activities.<sup>3</sup>
- 4.2 Serious failure to comply with the duties set out in paragraph 4.1 shall be professional misconduct and, if so found by a Barristers Disciplinary Tribunal, shall render the barrister liable to be punished in accordance with the provisions of the Ordinance and the subsidiary legislation thereunder.
- 4.3 Any failure to comply with the duties set out in paragraph 4.1 which does not, in the opinion of the Bar Council, amount to professional misconduct shall be a breach of proper professional standards and, if established to the satisfaction of the Bar Council, shall render the barrister liable either:-
- (a) to be ordered to attend upon the Chairman or some other person nominated by the Bar Council in order that he should be:-
- (i) admonished; and/or
- (ii) given appropriate advice as to his future conduct; or
- (b) to be:-
- (i) admonished; and/or
- (ii) given appropriate advice as to his future conduct
- by letter from the Chairman.
- 4.4 Further, for the avoidance of doubt, without prejudice to the generality of paragraphs 4.1, 4.2 and 4.3, the following shall, depending on the particular circumstances, constitute professional misconduct or breach of proper professional standards (as the case may be) by a barrister:-
- (a) making any declaration before or on his admission as a barrister, or relying on or using any material or information for such a purpose, that was false in any material respect;
- (b) failing to disclose to the Bar Council before his admission as a barrister of conduct engaged in by him prior to his admission as a barrister which was dishonest or which,

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<sup>3</sup> The duty of competence is not reduced when a practising barrister is led by, or appearing together with, another more senior barrister. Further, regardless of the terms on which one is instructed whether in terms of fees or other conditions of engagement, there is no such thing as a “straw” junior.



if committed by a barrister, would be dishonest or discreditable to a barrister or diminish public confidence in the profession of barrister or otherwise bring the profession of barrister into disrepute; and

- (c) breaching in any material respect a declaration made or an undertaking given on his admission as a barrister.

4.5 The Bar Council may, if satisfied that a pupil (whether called to the Bar or not) has been in breach of any duties set out in paragraph 4.1 or failed in any respects mentioned in paragraph 4.4, discipline the pupil in accordance with this Code and/or the provisions of the Ordinance and the subsidiary legislation thereunder. Such disciplinary actions may include, but are not confined to, the following:-

- (a) ordering the pupil to be admonished and/or given appropriate advice as to his future conduct in a manner as set out in paragraph 4.3;
- (b) imposing terms and conditions upon the continuation of the pupil's pupillage;
- (c) ordering any certificates that have been issued to the pupil to be varied or revoked, pursuant to section 17 of the B(QAP)R;
- (d) revoking the Bar Council's approval of the pupil's pupillage, pursuant to section 13(2)(a) of the B(QAP)R;
- (e) ordering the pupil's pupillage to be suspended or terminated, pursuant to rule 7(3) of the B(Q)R or section 15(2) of the B(QAP)R; and
- (f) in the case of a pupil who has been admitted as a barrister, submitting the matter to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel, pursuant to section 35.

4.6 A barrister (whether or not in practice) and a pupil<sup>4</sup> (whether or not he has been admitted as a barrister) must report promptly to the Bar Council if:-

- (a) he has been charged in Hong Kong with an indictable offence (including one triable or to be tried summarily);
- (b) he has been charged in any other part of the world with a criminal offence which if committed in Hong Kong would amount to an indictable offence (including one

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<sup>4</sup> For the avoidance of doubt, insofar as pupils are concerned, the duty to report set out in this paragraph are in addition to those imposed on pupils by the provisions of the B(Q)R and the B(QAP)R.

triable or to be tried summarily);

- (c) he has been convicted in Hong Kong or in any other part of the world of a criminal offence except:-
  - (i) an offence committed in Hong Kong in respect of the contravention of which a fixed penalty is prescribed under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap 237) or the Fixed Penalty (Criminal Proceedings) Ordinance (Cap 240);
  - (ii) an offence committed in Hong Kong or abroad which is dealt with by a procedure substantially similar to that applicable to such a fixed penalty offence;
- (d) he has been charged, whether in Hong Kong or in any other part of the world, with a disciplinary offence by another professional body of which he is also a member;
- (e) his conduct is being investigated or enquired into, whether in Hong Kong or in any other part of the world, by any statutory tribunal, and without prejudice to the generality of the foregoing, if he is a specified person before the Market Misconduct Tribunal established in accordance with the provisions of the Securities and Futures Ordinance (Cap 571);
- (f) bankruptcy proceedings have been initiated in respect of or against him in Hong Kong, or similar proceedings have been initiated in respect of or against him in any other part of the world;
- (g) director disqualification proceedings have been initiated in respect of or against him, or similar proceedings have been initiated in respect of or against him in any other part of the world;
- (h) a bankruptcy order or director disqualification order has been made against him in Hong Kong, or a similar order has been made against him in any other part of the world; or
- (i) he has entered into an individual voluntary arrangement with his creditors in Hong Kong, or similar arrangements in any other part of the world.

In case of doubt, the matter should be reported.

4.7 Where:-

- (a) a complaint about a barrister or pupil has been made to or by the Bar Council;
- (b) the Bar Council has reasonable grounds for believing that a breach of the duties set out in paragraph 4.1 or a situation mentioned in paragraph 4.4 may have occurred or is about to occur; or
- (c) a circumstance referred to in paragraph 4.6 has been reported to the Bar Council,

any barrister or pupil must respond promptly to any request from the Bar Council or the Discipline Committee for comments or information on the matter whether it relates to him or to another barrister or pupil.

4.8 It is the duty of every barrister:-

- (a) to attend proceedings before a Barristers Disciplinary Tribunal when so required;
- (b) to attend upon the Chairman or other nominated or appointed person when required to do so by the Bar Council under paragraph 4.3; and
- (c) to comply in due time with any sentence or suspension imposed or direction made or undertaking accepted by a Barristers Disciplinary Tribunal.

Any failure to do any of the aforesaid may by itself amount to or be regarded as professional misconduct.

4.9 It is the duty of every pupil (whether called to the Bar or not):-

- (a) if having been admitted as a barrister,
  - (i) to attend proceedings before a Barristers Disciplinary Tribunal when so required;
  - (ii) to comply in due time with any sentence or suspension imposed or direction made or undertaking accepted by a Barristers Disciplinary Tribunal;
- (b) to attend upon the Chairman or other nominated or appointed person when required to do so by the Bar Council under paragraph 4.5(a);
- (c) to comply in due time with any terms and conditions which the Bar Council may impose upon the continuation of his pupillage under paragraph 4.5(b).

Any failure to do any of the aforesaid may by itself amount to or be regarded as professional misconduct.

## CHAPTER 5

### PRACTISING BARRISTERS - GENERAL PRINCIPLES

#### Right to Practise

5.1 A barrister may not practise as such unless he:-

- (a) holds a valid practising certificate issued by the Bar Council under section 30<sup>5</sup>; and
- (b) save where he has been admitted under section 27(4), has provided in writing to the Bar Council the current address and telephone number(s) of the professional chambers in Hong Kong from which he practises.

5.2 A barrister is not entitled to, and will not, be issued with a practising certificate for any particular year unless and until he has paid:-

- (a) the subscription for membership of the Association;
- (b) save where he has been admitted under section 27(4) and the Bar Council has exempted him therefrom, the premium prescribed by the Bar Council for his insurance under the current Master Policy; and
- (c) the fee for the practising certificate

payable by him for that year. It is the duty of a practising barrister, if he intends to practise or carry on practice in any year, to ensure that his membership subscription, insurance premium and practising certificate fee for that year are paid promptly upon being rendered the invoices therefor.<sup>6</sup>

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<sup>5</sup> Any person who, not being a qualified barrister, either directly or indirectly, practises or acts as a barrister is guilty of a criminal offence and may be fined up to HK\$500,000 on summary conviction under section 44(1)(a). The qualifications for practice as a barrister can be found in section 31. One such qualification is the holding of a valid practising certificate.

<sup>6</sup> For the avoidance of doubt, a practising certificate will be dated the 1<sup>st</sup> day of January only if the barrister has by that date paid his membership subscription, insurance premium and practising certificate fee and furnished to the Association evidence of insurance or exemption from insurance under paragraph 5.4. Further, a barrister who fails to pay his membership subscription, insurance premium or practising certificate fee by the 1<sup>st</sup> day of January of any year may be presumed and treated by the Bar Council as no longer wishing to continue practice in that year.

- 5.3 Subject to any exemptions which may be granted by the Bar Council under paragraph 5.5, all barristers who hold and/or intend to apply for practising certificates, including pupils in limited practice, must:-
- (a) be insured under the current Master Policy; and
  - (b) punctually pay the contribution to the premium payable by the Association for such insurance:-
    - (i) at the rates and in the amounts determined by the Bar Council from time to time;
    - (ii) to the insurance brokers specified by the Bar Council (“the brokers”); and
    - (iii) at or by the time or times specified by the Bar Council.
- 5.4 It shall also be a condition for the issue of a practising certificate that the barrister applying for the same shall, on making such application, produce to the Association:-
- (a) documentary evidence, in a form approved by the Bar Council and issued by the brokers, of having duly paid his contribution to the premium payable by the Association for insurance under the Master Policy for the period to be covered by the practising certificate being applied for; or
  - (b) a written exemption from being so insured issued by the Bar Council under paragraph 5.5.
- 5.5 The Bar Council shall have power, with or without the imposition of conditions (as to the provision of any undertakings or otherwise) to exempt a person admitted under section 27(4) on an *ad hoc* basis for the purposes of a specific case or cases from being insured under the Master Policy in such circumstances as the Bar Council may, at its discretion, consider appropriate.

### **Practice**

- 5.6 A practising barrister may not, whether or not he is acting for a fee or other reward, supply legal advice or service to the public or to a section of the public otherwise than in the course of his practice. This rule is subject to the following exceptions:-

- (a) A practising barrister may supply legal advice or service in any jurisdiction outside Hong Kong if the rules in force in that jurisdiction permit him to do so.
- (b) A practising barrister may lecture on, teach or write about legal matters or edit legal text books or articles on legal matters in newspapers or journals.
- (c) A practising barrister may give advice on legal matters free to a friend or relative or on a charitable basis.
- (d) A practising barrister may participate in the Duty Lawyer Service Free Legal Advice Scheme, the Bar Free Legal Service Scheme and such other free legal advice or service schemes as may be approved by the Bar Council.
- (e) A practising barrister may act as an unpaid or honorary legal adviser to any charitable, benevolent or philanthropic institution.
- (f) A practising barrister who is a non-executive director of a company or a trustee or governor of a charitable, benevolent or philanthropic institution or a trustee of any private trust may give to the other directors, trustees or governors (as the case may be) the benefit of his learning and experience on matters of general policy and of general legal principles applicable to the affairs of the company, institution or trust.
- (g) A practising barrister may, subject to the prior approval of the Bar Council, give advice on legal matters free in a scheme or programme established to the satisfaction of the Bar Council to further the purposes of promoting amongst the public greater awareness of their legal rights, or respect for the rule of law or otherwise promoting the objects of the Association<sup>7</sup>.

5.7 Subject to the overriding principles set out in paragraph 5.8:-

- (a) A practising barrister who wishes to be engaged in any occupation/work other than that of a barrister, with the exception of occupations listed in Annexes 1 and 2, shall give prior written notification to the Council in the form prescribed by the Council of the nature, duration of the other occupation/work and the terms of the engagement two weeks before the commencement of the engagement.

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<sup>7</sup> When considering an application for approval under this paragraph, the Bar Council will generally require undertakings from the participating member, firstly, to ensure that the scheme is genuinely run for the purposes set out in this paragraph rather than for touting for business and, secondly, not to accept any work for a fee if the initial contact for that work is obtained from his participation in the scheme in respect of which the application for approval is made. See Circular No.017/03.

- (b) The Council may make enquiries and request for further information from the practising barrister who has given the prior written notification concerning the engagement in the other occupation/work as the Council sees fit. The practising barrister shall supply the required information within 7 days from the date of the enquiry and request, and in any event before the commencement of the engagement in the other occupation/work.
- (c) The Council may issue written advice to any practising member, whether he has given the above prior written notification or not, for him not to engage or continue to be engaged in any other occupation/work that comes to the notice of the Council if the Council is of the view that such engagement is or will be in breach of paragraph 5.8.
- (d) If the practising member fails to give the above prior written notification or fails to provide the information requested by the Council or fails to comply with the advice issued by the Council or commence any other occupation/work in breach of the above paragraphs the practising member commits a disciplinary offence and is liable to be disciplined. (Circular No. 206/18)

5.8 A practising barrister may not

- (a) engage directly or indirectly in any other occupation if his association with that occupation may adversely affect the reputation of the Bar, or prejudice his ability to attend properly to his practice or the interests of his clients; or
- (b) use or permit the use of his professional qualification for the advancement of any other occupation in which he is directly or indirectly engaged or for private advantage, save in relation to any occupations which involve the skills of a barrister.

### **Practice from Professional Chambers**

5.9 A barrister (other than one admitted under section 27(4) on an *ad hoc* basis for the purposes of a specific case or cases) may not practise unless:

- (a) he is a member of, or has or is temporarily permitted the use of, professional chambers in Hong Kong; or
- (b) he is a pupil of a practising barrister and is otherwise qualified to practise,



provided that a barrister will be deemed to have the use of professional chambers in Hong Kong where he uses such temporary chambers as may be provided or approved by the Bar Council.

5.10 For the purposes of this and other parts of this Code:-

- (a) The words “chambers” and “professional chambers” mean premises and other office facilities used by one or more practising barristers to carry on their practice and not shared with persons who are not practising barristers.
- (b) It is however not objectionable for a practising barrister to share premises and other office facilities with a non-practising Hong Kong barrister, a retired Hong Kong judge, a foreign lawyer or a retired judge from another jurisdiction provided that that person is practising solely as an arbitrator or mediator in Hong Kong.
- (c) Save for such exception, business centres or other premises and office facilities shared with persons who are not practising barristers are not chambers or professional chambers for the purposes of this Code.

5.11 For the avoidance of doubt, paragraph 5.10 does not prevent chambers from advertising on the door and in chambers’ literature connection with a former member of chambers who has since become a judge or who has ceased practice in Hong Kong. Such a person should however be described as a “former member” or “former tenant” and not “associate member” or “door tenant”, which expressions are capable of conveying a suggestion that the person so described holds a current practising certificate and is available to accept instructions through chambers.

5.12 Subject to such exceptions as may be approved by the Bar Council, residential premises or any part thereof are not professional chambers.

5.13 A practising barrister who is a member of professional chambers must:-

- (a) have his name exhibited at the chambers; and
- (b) have the right to make such use of the chambers, and of its administration and facilities, as his practice requires<sup>8</sup>.

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<sup>8</sup> The requirement of professional chambers is not complied with by just having one’s name exhibited on the door of chambers or a mail box without access to other chambers facilities. Chambers should not admit as tenant (even door tenant) a practising barrister on terms that do not give him the right to make such use of chambers, and of its administration and facilities, as his practice requires. See Circular No.074/07.

- 5.14 A practising barrister may not be a member of more than one set of professional chambers in Hong Kong.

### **Complete Independence in Practice and Conduct as Sole Practitioner**

- 5.15 A practising barrister cannot enter into partnership, employment or other similar relationship with another practising barrister or any other person in connection with his practice as a barrister. Two or more practising barristers may agree to share professional expenses, either in proportion to their receipts or in any other way; but they may not (save as provided in paragraphs 6.25 to 6.26) agree to share professional receipts or agree that any one or more of them shall assume responsibility for the professional work of the other or others.

### **Acting only upon Instructions from Solicitors or Other Approved Persons**

- 5.16 (a) Subject to the exceptions provided for in paragraph 5.17, a practising barrister may not act, whether for a fee or otherwise, in a professional capacity except upon the instructions of a solicitor.
- (b) For the avoidance of doubt:
- (i) Provided that the criteria set out in the definition of “solicitor” in paragraph 2.2(aq) are satisfied,<sup>9</sup> a practising barrister may accept instructions from a solicitor
- (1) who is not practising in, from or with a firm of solicitors but who, under a contract of employment, works in-house and provides legal services exclusively to his employer; and
- (2) who is giving instructions in the course of such employment.
- (ii) A practising barrister who receives instructions from such a solicitor should:
- (1) decline to act if, or (having accepted instructions) to act further at any stage when, he considers it in the interests of the lay client that a firm

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<sup>9</sup> There is no additional requirement that the instructing in-house solicitor should have professional indemnity insurance coverage in respect of the matter of the instruction.

of solicitors be instructed, having regard to all relevant circumstances including but not limited to the nature and complexity of the matter of the instructions and the capacity and capability of the instructing solicitor in handling the same without retaining a firm of solicitors; and

(2) be particularly mindful of paragraph 5.19.

5.17 A practising barrister may accept instructions directly and without the intervention of a solicitor from:-

- (a) a person or body authorised by custom or the Bar Council to do so. The persons and bodies currently so authorised are set out in Annex 3; and
- (b) subject to and in accordance with the Direct Access Rules (in Annex 5, 6A or 6B as the case may be), a Qualified Instructing Member or Officer of a Recognised Direct Access Body in any matter of a kind which falls generally within the professional expertise of the members of the professional body or within the functions of the statutory body, as the case may be.

5.18 With regard to Direct Access work under paragraph 5.17(b):-

- (a) The Bar Council may from time to time approve a professional or statutory body as a Recognised Direct Access Body on such terms and conditions as it may consider appropriate, having regard to whether the body satisfies each of the following criteria:-
  - (i) the body or its members or relevant officers provide skilled and specialist services; and
  - (ii) the body or its members or relevant officers are likely to have a significant requirement to retain the services of a practising barrister for its own benefit or the benefit of their clients or employers and those engaging them,

and where the body seeking recognition is a professional body, also having regard to whether its affairs and the conduct of its members are regulated by a written constitution which among other matters:-

- (1) provides for admission to membership of persons who have satisfied by examination specified high standards of general and professional education; and
  - (2) makes unethical or dishonourable conduct by a member a disciplinary offence and has an effective enforcement procedure for breach of its disciplinary rules.
- (b) A professional or statutory body shall only be a Recognised Direct Access Body when it has been approved as such by the Bar Council. The professional and statutory bodies currently approved by the Bar Council as a Recognised Direct Access Body and their respective Qualified Instructing Members or Officers are set out in Annex 4.
- (c) (i) Unless and to the extent that they are excluded or varied by agreement, all briefs and instructions for Direct Access work are deemed to be accepted by a practising barrister on the terms and conditions of the Recommended Standard Terms of Engagement set out in Annex 6.
- (ii) Where different Recommended Standard Terms of Engagement have been agreed between the Bar Council and a particular Recognised Direct Access Body, they are specified in Annex 4 and respectively reproduced in Annexes 6A to 6J.
- (iii) Until the law is changed, by virtue of his status, all instructions are accepted by a practising barrister without there being a contract. Accordingly, the Recommended Standard Terms of Engagement at Annexes 6, 6A to 6J will be binding in honour only. A practising barrister is not obliged to adopt such 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.

#### **Work that should not be Undertaken by a Practising Barrister**

5.19 A practising barrister should not accept any instructions to:-

- (a) receive, disburse or otherwise handle clients' money, securities or other assets other than by receiving payment of his fees;

- (b) do any work by way of the management, administration or general conduct of a lay client's business or affairs;
- (c) do any work by way of the management, administration or general conduct of the litigation or matter that is the subject-matter of the instructions;
- (d) do *inter partes* work<sup>10</sup> of a kind not normally performed by a practising barrister in Hong Kong; or
- (e) undertake any work usually performed exclusively by solicitors<sup>11</sup> or members of other professions<sup>12</sup>.

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<sup>10</sup> For example, the conduct of correspondence with the opposite party in the barrister's name although a practising barrister may advise on *inter partes* correspondence including the drafting and settlement of letters.

<sup>11</sup> For example, conducting the conveyance of property, obtaining probate or letters of administration and administering a trust fund/estate although a practising barrister may accept instructions to advise on a conveyancing, probate and administration of trust/estate matter.

<sup>12</sup> For example, the incorporation of companies and the provision of shelf companies and company secretarial services.

## CHAPTER 6

### THE ACCEPTANCE AND RETURN OF BRIEF/INSTRUCTIONS BY PRACTISING BARRISTERS

#### The Acceptance of Brief/Instructions

6.1 A practising barrister must accept any brief to appear before a court or instruction to provide any other legal services in a field in which the barrister practises or professes to practise if:

- (a) the brief or instruction is within the barrister's capacity, skill and experience;
- (b) the barrister would be available to prepare and appear or otherwise work when the brief or instruction would require him to do so, and is not already committed to other engagements which may, as a real possibility, prevent him from being able to advance a client's interests to the best of his skill and diligence;
- (c) the fee offered on the brief is proper;<sup>13</sup> and
- (d) the barrister is not obliged or permitted to refuse the brief or instruction under paragraphs 6.2 to 6.7;

and must do so irrespective of

- (i) the nature of the case;
- (ii) the party on whose behalf he is instructed; and
- (iii) any belief or opinion which he may have formed as to the character, reputation, cause, conduct, guilt or innocence of that person.

6.2 A practising barrister must not accept any instructions if to do so would cause him to be professionally embarrassed. For this purpose, a barrister will be professionally embarrassed:-

- (a) if he lacks sufficient experience or competence to handle the matter;

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<sup>13</sup> For the purpose of this sub-paragraph and paragraph 6.6(b), a barrister should not, with the intent of deterring the solicitor from continuing to offer a brief to him, set his fee higher than he would otherwise set if he were willing to accept the brief.

- (b) if he will be unable to do or complete within the time requested or otherwise within a reasonable time, or will not have adequate time and opportunity to properly prepare for, that which he is required to do;
- (c) if the instructions seek to limit the ordinary authority or discretion of a barrister in the conduct of proceedings in Court or to require a barrister to act otherwise than in conformity with the law or with the provisions of this Code;
- (d) if the matter is one in which he knows or has reasonable grounds to believe that there is a real possibility that he may cease to be a solely disinterested advocate by becoming also a witness in the case;
- (e) if the matter is one in which by reason of any connection with the client it will be difficult for him to maintain professional independence. Examples of the operation of this rule are given in Annex 7;
- (f) if the matter is one in which, by reason of any connection with the Court or a member thereof, the impartial administration of justice might be or might appear to be prejudiced. Examples of the application of this rule in regard to judicial position and family relationship are given in Annex 8;
- (g) if there is or appears to be a conflict or risk of conflict either between the interests of the barrister and some other person or between the interests of any one or more clients (unless all relevant persons consent to the barrister accepting the instructions and the barrister is able to act without embarrassment);
- (h) if he has material information which was entrusted to him in confidence by or on behalf of another client or former client or there is a significant risk that information confidential to another client or former client might be communicated to or used for the benefit of anyone other than that client or former client without their consent; and
- (i) if, for any other reasons, there is or appears to be a risk that he will be hampered in his ability to discharge, or be embarrassed in the discharge of, his professional duties.

6.3 A practising barrister must not appear as Counsel:-

- (a) in a matter in which he himself is a party or has a material personal (whether pecuniary or otherwise) interest;

- (b) either for or against any company of which he is a shareholder or an officer or in which he has directly or indirectly a material personal (whether pecuniary or otherwise) interest.

Examples of the operation of this rule are given in Annex 7. Exceptions may be authorised by the Bar Council.

6.4 A practising barrister may not, save with the permission of the Bar Council, accept a brief or instructions in any matter with which he has previously been concerned in the course of another profession or occupation. For the avoidance of doubt, it is not objectionable for a practising barrister to accept a brief or instructions in a matter with which any firm or company in which he has been a partner or director or by which he has been employed has been so concerned during the period of his partnership, directorship or employment, provided that the barrister had not himself been in any way concerned with that matter in the course of his partnership, directorship or employment. In case of doubt, the barrister should seek guidance from the Bar Council before accepting the brief or instructions.

6.5 Even if there be no conflict of interest, when a practising barrister has held a brief for any party in any proceeding, he shall not accept a brief on an appeal or in a further stage in such proceeding for any other party without giving the original client the opportunity of delivering a brief to him for such appeal or further stage.

6.6 A practising barrister is not obliged to accept instructions:

- (a) requiring him to do anything other than during the course of his ordinary working year;
- (b) other than at a fee which is proper having regard to:
  - (i) the complexity, length and difficulty of the case; and
  - (ii) his ability, experience and seniority;

and any instructions in a matter funded by the Director of Legal Aid or the Duty Lawyer Service for which the amount or rate of the barrister's remuneration is prescribed by regulation or subject to assessment shall for this purpose unless the Bar Council or the Bar in general meeting otherwise determines (either in a particular case or in any class or classes of case or generally) be deemed to be at a proper professional fee;

- (c) save in a matter funded by the Director of Legal Aid or the Duty Lawyer Service:



- (i) unless and until his fees are agreed;
  - (ii) if having required his fees to be paid before he accepts the instructions, those fees are not paid;
- (d) from anyone other than a professional client who accepts liability for the barrister's fees;
  - (e) in a matter where the lay client is also the professional client;<sup>14</sup>
  - (f) where the potential liability for professional negligence in respect of the case could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for him to accept; or
  - (g) if he has previously advised or drawn pleadings or appeared for another person on or in connection with the same matter.
- 6.7
- (a) Subject to sub-paragraph (b) hereof, a practising barrister may, but is not obliged to, accept instructions limited to a particular matter or issue in the proceedings, such as an application to adjourn the proceedings, and may withdraw from further participation in the proceedings after carrying out those instructions.
  - (b) Apart from instructions to apply for an adjournment of the proceedings or a part thereof, a practising barrister may only accept limited instructions in criminal proceedings if satisfied that the accused person will continue to be represented after his withdrawal therefrom upon the carrying out of those instructions.
  - (c) A practising barrister may not appear before any Court on limited instructions without a brief or backsheets marked with the words “Limited Instructions”.
  - (d) Where a practising barrister accepts instructions limited to applying for an adjournment of the proceedings or a part thereof, he shall inform the Court before which he has been instructed to appear of the limited nature of his instructions at the first available opportunity after his acceptance of such instructions.

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<sup>14</sup> A practising barrister may act on the instructions of a professional client who is also the lay client provided that he is satisfied that his independence would not be compromised and that he can discharge his duty to the client and the Court without being independently instructed. Where he comes to the view that his duty to the client and the Court is such that he ought to be independently instructed, he should request for independent instructions and, if refused, may decline to act. See Circular No.043/03.

- 6.8 A practising barrister may accept a brief to take notes for a party to an action or for some person interested therein, but, if so instructed, he may not take any part in the trial or hearing or do anything other than in compliance with his instructions and in compliance with the relevant rules and procedure of the Court or Tribunal.
- 6.9 A practising barrister is not considered to have accepted a brief or instructions unless he has had an opportunity to consider it and has expressly accepted it. He should, as soon as reasonably practicable after receipt of any brief or instructions, satisfy himself whether there is any reason why he ought to decline to accept the brief or instructions and accept or decline the brief or instructions as the case may be without delay.

### **The Return of Briefs/Instructions**

- 6.10 A practising barrister must return any instructions and do so without any delay:
- (a) if he cannot continue to act without being in breach of any principles or rules of professional conduct;
  - (b) if continuing to act would cause him to be professionally embarrassed within the meaning of paragraph 6.2 provided that if he would be professionally embarrassed only because it appears to him that he is likely to be a witness on a material question of fact, he may retire or withdraw only if he can do so without jeopardising the client's interests;
  - (c) if having accepted instructions on behalf of more than one client there is or appears to be:
    - (i) a conflict or risk of conflict between the interests of any one or more of such clients; or
    - (ii) a risk of a breach of confidence;and the clients do not all consent to him continuing to act for one or more of them or he is unable (even with the consent of all the clients) to continue to act for one or more of the clients without embarrassment;
  - (d) if the client refuses to authorise him to make some disclosure to the Court which his duty to the Court requires him to make;

- (e) if, having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on discovery, the client refuses or fails forthwith to disclose it;
- (f) if, having come into possession of a document belonging to another party by some means other than the normal and proper channels and having read it before he realises that it ought to have been returned unread to the person entitled to possession of it, he would thereby be embarrassed in the discharge of his duties by his knowledge of the contents of the document provided that he may retire or withdraw only if he can do so without jeopardising the client's interests; or
- (g) if he has reasonable grounds to believe that there is a real possibility that he may cease to be a solely disinterested advocate by becoming a defender of his own personal or professional conduct against criticism unless he also believes on reasonable grounds that:
  - (i) allegations which involves the barrister in that way have been raised in order to remove the barrister from the case; and
  - (ii) those allegations can be met without materially diminishing the barrister's disinterestedness.

6.11 Subject to paragraph 6.14, a practising barrister must complete his retainer and may withdraw from a case only where he is satisfied that:

- (a) his instructions have been withdrawn;
- (b) his professional conduct is being impugned;
- (c) advice which he has given in respect of any actual or potential conflict of interest between the client and the barrister or professional client or other intermediary has not been heeded;
- (d) his agreed fees has not been paid within a reasonable time or that he has reasonable grounds to doubt that agreed fees will not be paid in accordance with the costs agreement or within a reasonable time;<sup>15</sup> or

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<sup>15</sup> As for what is reasonable time, taking into account the first paragraph of Circular No.6/81 issued by the Law Society of Hong Kong, reproduced hereto as Annex 9A, a Barrister Disciplinary Tribunal held on 6 November 2014 that a reasonable time for settlement of Counsel fees is 2 months from the date of the fee note, after which, subject to paragraph 6.13, Counsel's obligation, if any, to continue to act on the instructions of the firm of solicitors or to act for the lay client will be discharged. However, it is unethical for Counsel to return a brief leaving insufficient time for another Counsel to be engaged and master the brief.

- (e) there is some other good or substantial reason for so doing.<sup>16</sup>
- 6.12 A practising barrister whose lay client behaves in an offensive manner must nevertheless continue to act unless:
- (a) he is justified in assuming that his instructions have been withdrawn (in which event he should discuss the position with the person instructing him in the matter or his representative before withdrawing from the case); or
  - (b) he finds that his professional conduct is being or is likely to be impugned and he can withdraw from the case at that stage without jeopardising his lay client's interests.
- 6.13 A practising barrister must not cease to act or return instructions, even where it is appropriate to do so:
- (a) without having first explained to the client his reasons for doing so;
  - (b) without having first given reasonable notice to the client or otherwise in circumstances that would leave the client unable to find other legal assistance in time to prevent prejudice being suffered by the client; or
  - (c) by returning instructions to another barrister without the consent of the client.
- 6.14 Briefs are in general accepted on the understanding that the barrister concerned may be unavoidably prevented by a conflicting professional engagement from attending the case. A practising barrister must inform the person instructing him in the matter as soon as there is an appreciable risk that he may not be able to undertake a brief which he has accepted; and he must in any event return that brief in sufficient time to allow for another barrister to be engaged and to master the brief.
- 6.15 When a practising barrister has accepted a brief for the defence of a person charged with a serious criminal offence he should so far as practicable ensure that the risk of a conflicting professional engagement does not arise. If, in the event, a practising barrister is instructed in a civil case which clashes with instructions to defend a person on a serious criminal charge, he should, save in exceptional circumstances, return the brief in the civil case.

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<sup>16</sup> Examples of good or substantial reasons include where the barrister is unable to obtain clear instructions from the client, or where there is a serious breakdown in confidence between the barrister and the client.

- 6.16 A practising barrister must not, except with the consent of the lay client and where appropriate the leave of the Court, return a brief which he has accepted and for which a fixed date has been obtained or break any other engagement to supply legal services in the course of his practice in order to attend or fulfil an engagement of any other kind (including a social or other non-professional engagement).
- 6.17 (a) If a practising barrister receives instructions where a time limit has been set for the completion of the work, and the barrister sees no reasonable prospect of his being able to finish the work within that time limit, he should either return the instructions forthwith or obtain further time from the person instructing him in the matter forthwith.
- (b) If a practising barrister receives instructions and it is or becomes apparent to him that he cannot do the work within a reasonable time, he should inform the instructing solicitor forthwith.

### **Marking of Counsel's Diary<sup>17</sup>**

- 6.18 (a) Although having his diary marked does not commit a practising barrister, by allowing a solicitor to mark his diary the barrister implies that he will reserve the date(s) marked for, and give priority to, the particular solicitor's case subject to agreement on his fees and other terms of his engagement.
- (b) If after his diary has been marked by a solicitor, the barrister is approached by another solicitor wishing to brief him for the same period of time or part thereof, the barrister should approach the first solicitor to give him the opportunity to agree his fees and other terms of his engagement (if they have not been agreed) and to deliver the brief. The barrister may vacate the first solicitor's case from his diary and to accept the brief from the second solicitor only if agreement cannot be reached with the first solicitor as to his fees or terms of engagement or as to the delivery of the brief.

### **Acceptance of Brief/Instructions by Senior Counsel**

- 6.19 A Senior Counsel (other than a Queen's Counsel or Senior Counsel from another jurisdiction who is admitted under section 27(4) on an *ad hoc* basis for the purposes of a specific case or cases and whose position in this regard is governed by paragraph 12.2) may appear in any Courts without a junior.

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<sup>17</sup> See further Law Society Circular No.6/81 at Annex 9A.

6.20 A Senior Counsel:-

- (a) is however not obliged to accept a brief to appear alone or instructions to settle alone any document of a kind generally settled only by or in conjunction with a junior; and
- (b) should not act without a junior if he considers that the interests of the lay client require that a junior should also be instructed.

6.21 Where he has agreed to appear or accept instructions without a junior, a Senior Counsel may draft pleadings or other documents in accordance with such instructions.

6.22 Where both a Senior Counsel and junior Counsel are instructed, the Senior Counsel should not normally advise except in consultation with the junior. Where both a Senior Counsel and junior Counsel have been instructed but no papers have yet been delivered to junior Counsel, the Senior Counsel may advise in conference or give a written opinion without the assistance of a junior. A Senior Counsel should not normally draft or settle a petition or a case in proceedings before the Court of Final Appeal without the assistance of a junior.

6.23 (a) A Senior Counsel should normally be willing at any time before the first anniversary of his appointment as a Senior Counsel:-

- (i) to settle, amend, re-settle or otherwise complete as a junior, any document relating to non-contentious matter which he was originally instructed to settle before his appointment;
  - (ii) to settle pleadings and other documents, appear at the trial or at any hearing preceding the trial and do any other ordinary work of a junior in any proceeding (whether civil or criminal) in regard to which he was instructed before his appointment.
- (b) A Senior Counsel may at his discretion continue to act as a junior (including settling pleadings, notices of appeal and other documents, appearing at any hearing [whether original or appellate] and doing any other ordinary work of a junior) without limit of time:-
- (i) in a criminal case, if he was instructed in the case (whether for the prosecution or the defence) before his appointment as a Senior Counsel;

- (ii) in a civil suit, if he was instructed therein before his appointment as a Senior Counsel and before the first anniversary of his appointment appeared as a junior at the trial or in an appeal therein.
  - (c) If a junior Counsel takes silk and continues in a case as a junior, he must take a junior's fee.
- 6.24 Where two or more Counsel are instructed in the same case, the junior Counsel should be paid an appropriate fee.

### **Delegation of Work**

- 6.25 Except as provided in paragraph 10.57, a practising barrister may not hand over his brief to another practising barrister to take his place and to conduct the case as if the latter barrister had himself been instructed unless the person instructing him in the matter consents.
- 6.26 A practising barrister who has been instructed to draft any document or advise in writing may not delegate this responsibility to another practising barrister; but he may obtain assistance in the performance of such work provided he makes himself personally responsible for the contents of the completed work.
- 6.27 (a) It is the duty of a practising barrister who arranges for another practising barrister to undertake work on his behalf (other than a pupil or a person who has asked to do the work in order to increase his own skill or experience):-
- (i) to pay proper financial remuneration for the work done;
  - (ii) to make payment within a reasonable time and in any event within 2 months after the work has been done, unless otherwise agreed in advance with the other barrister; and
  - (iii) to deal with payment for such work himself and not delegate responsibility to anyone else.
- (b) Proper financial remuneration in respect of the conduct of hearings involving evidence or argument, including the holding of a brief for a hearing which the barrister may not be able to attend but which he in fact does attend, or the execution of paper work, should be such as to compensate the other barrister adequately for the work done, the time spent and the expense (if any) which he has incurred.

- (c) Although the provisions of sub-paragraphs (a) and (b) hereof do not apply to work done by pupils, and although a pupil currently has no right or expectation to receive remuneration from another barrister for whom the pupil has undertaken work at any stage of his pupillage, a barrister for whom a pupil has done work of value to him should as a matter of honour and fairness remunerate the pupil at any stage of his pupillage.
  
- (d) A practising barrister who arranges for a pupil or another practising barrister to undertake work in order to increase the latter's skill and experience is encouraged to show him/her the final piece of work that is delivered to the instructing person.



## CHAPTER 7

### ADMINISTRATION OF PRACTICE

#### General Provisions

- 7.1 It is the duty of a practising barrister at all times to take all reasonable steps to ensure that his practice is efficiently and properly administered having regard to the nature of his practice, and that all records required by law or this Code to be kept are properly kept.
- 7.2 A practising barrister must take all reasonable and practicable steps to ensure that:-
- (i) he does work which he is briefed, instructed or otherwise required to do in sufficient time to enable compliance with the law or rules, practice directions, orders or directions of the Courts; and
  - (ii) warning is given to those who instruct him or the client and, where appropriate, to the Court and the opponent, as soon as he has reasonable grounds to believe that he may not complete any work on time.
- 7.3 A practising barrister who is the head of a set of chambers is or, in the absence of a head, the member or members of chambers who are entrusted with the administration of chambers or, in the absence of such member(s), all the members of chambers are responsible for seeing:
- (a) that the chambers are administered competently and efficiently;
  - (b) that the affairs of the chambers are conducted in a manner which is lawful, fair and equitable for all members and pupils; and
  - (c) that appropriate systems and measures are in place within the chambers for the secure handling, storage, preservation and disposal of privileged or confidential papers and information entrusted to members both on paper and in electronic form.

Even where there is/are a head of chambers or member(s) of chambers responsible for the administration of chambers, all other members must use their best endeavours to assist or co-operate in the achievement of these objects.

## **Regarding Acceptance and Preservation of Records of Instructions**

- 7.4 In the case of instructions other than from a person authorised by custom or the Bar Council as set out in Annex 3 or from a Qualifying Instructing Member or Officer of a Recognised Direct Access Body as set out in Annex 4, the first point of contact in instructing a barrister (or a member of his staff authorised to accept instructions on his behalf) in any matter must be by the instructing solicitor personally and not by a member of his staff. A barrister may not accept instructions from a solicitor's or solicitors' firm without having made this first point of contact.
- 7.5 (a) Except when appearing in a Magistrates' Court on the instructions of the Department of Justice, a practising barrister instructed by a solicitor, the Director of Legal Aid or the Department of Justice (other than on a prosecution brief) must ensure that on every occasion when he appears before a Court he has in his possession in court a backsheet (and not a mere copy thereof) bearing the following information (*Circular No. 153/17*):-
- (i) the name of the case, and if available, the number assigned to the case by the Court;
  - (ii) the name of the barrister;
  - (iii) the name of the solicitor's or solicitors' firm instructing or where appropriate, the Legal Aid Department or the Department of Justice;
  - (iv) the name of the instructing solicitor;
  - (v) the file reference of the instructing firm or the Legal Aid Department or the Department of Justice for the case;
  - (vi) the Court in which the case is listed for hearing;
  - (vii) the date or dates of hearing;
  - (viii) the nature of the work to be done; and
  - (ix) the agreed fee and any agreed refresher or the words "Legal Aid" or "No Fee" as appropriate.
- (b) In a criminal matter, the backsheet referred to in sub-paragraph (a) above shall be signed by the person instructing the barrister in the matter in his personal signature.
- (c) In any other matter, the backsheet referred to in sub-paragraph (a) above shall be signed by the person instructing the barrister in the matter either in his personal signature or in the name of the solicitor's or solicitors' firm instructing.
- (d) Unless provided by the person instructing him in the matter with a backsheet satisfying the aforesaid requirements, a barrister may not appear in the case in question.

- (e) For the avoidance of doubt, this paragraph does not apply when a practising barrister appears in any Court on the instructions of the Duty Lawyer Service. (*Circular No. 153/17*)

7.6 A practising barrister must, when instructed by a person authorised by custom or the Bar Council or by a Qualified Instructing Member or Officer of a Recognised Direct Access Body, ensure that on every occasion when he appears before a Court he has in his possession in court a backsheet (and not a mere copy thereof) bearing the particulars set out in paragraph 7.5(a) insofar as such particulars are applicable *mutatis mutandis*.

7.7 Where after the first point of contact referred to in paragraph 7.4, a practising barrister is instructed on behalf of a firm of solicitors by a person not legally qualified, that is being a person who is neither a solicitor nor a trainee solicitor (“an unqualified person”) whether in connection with a criminal or civil matter:-

- (a) to provide legal advice or assistance, whether orally, in writing or in any other manner; or
- (b) to make a professional visit to a client or potential client and, in relation to criminal matters, in particular, at a police station or at the premises of some other law enforcement or custodial agency;

and if, when rendering such advice or assistance or upon attendance at the place or Court in question, the instructing solicitor is not present, the barrister may only accept such instructions if, and may not act professionally in relation to such case unless prior to any professional work being rendered by the barrister:-

- (i) (whether or not such person is known to the barrister) the unqualified person identifies himself to the barrister and produces his Hong Kong Identity Card to the barrister for inspection;
- (ii) the barrister satisfies himself of the identity of the person so instructing by inspection of his said Hong Kong Identity Card;
- (iii) the unqualified person so instructing provides the barrister with a backsheet satisfying the requirements set out in paragraph 7.5(a)(i), (ii), (iii), (iv), (v), (viii) and (ix) and signed personally by the instructing solicitor; and
- (iv) the barrister endorses on his backsheet the name of the unqualified person so instructing him and the number of his Hong Kong Identity Card shown to him as aforesaid.

- 7.8 (a) A practising barrister shall issue a written fee note in respect of all professional work done to the company, firm or other body upon whose instructions such work was done, marked for the attention of the person instructing him.
- (b) Except when appearing on the instructions of the Department of Justice or the Duty Lawyer Service or with the prior written permission of the Bar Council or in the case of devilling, a practising barrister shall in any case only accept payment of his professional fees by cheque or bank transfer either drawn on or made out of the account of the company, firm or other body instructing him or sent directly by such company, firm or other body in satisfaction of his fees by reference to his fee note and in no circumstances may he accept payment of his professional fees in cash.
- (c) Upon receipt of payment in respect of his fee note, a practising barrister shall issue a written receipt in respect thereof and send the same to the company, firm or body instructing, marked for the attention of the instructing solicitor.<sup>18</sup>

7.9 A practising barrister must ensure that:-

- (a) the date of receipt is marked on every brief for him to appear at a Court; and
- (b) proper records are kept in his chambers including a record of the date of receipt of each brief or set of papers; the name of the case; the names of the person and the firm or other body of which that person is a partner, member, employee or officer instructing him in the matter; and where appropriate, the fee.

7.10 It is the duty of every practising barrister to retain in his custody or control for at least two years from the date when the same was first made or received by the barrister, legible copies<sup>19</sup> of the following documents in respect of each and every case or matter on which he has been instructed, namely:-

- (a) any backsheet obtained by the barrister pursuant to paragraphs 7.5(a), 7.6 and 7.7(iii);
- (b) all fee notes rendered in the case or matter in question;

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<sup>18</sup> In the case of instructions by an in-house solicitor, the provisions in this paragraph may be complied with by issuing the fee note and receipt to the company, firm or body employing the instructing solicitor and on whose behalf the instructions were given.

<sup>19</sup> Electronically stored copies are acceptable.

- (c) all receipts issued in respect of fees paid in the case or matter in question which should be endorsed by or on behalf of the barrister with the details of all cheques by which such payments were made.
- 7.11 The Chairman or Vice-Chairmen or such other person as the Chairman or the Bar Council may authorize so to act may orally or in writing require a practising barrister:-
- (a) to produce forthwith for inspection his backsheet as required under paragraphs 7.5(a), 7.6 and 7.7(iii);
  - (b) to produce forthwith or at any specified time, being a reasonable time of day, for inspection by any person or persons, including any Inspector appointed by the Law Society pursuant to section 8AA, the copy records required to be retained by the barrister pursuant to paragraph 7.10;
  - (c) to permit the person or persons named in the request (should the same regard such course of action convenient) to make copies of such records and if necessary, to remove them from the barrister's chambers for this purpose on their providing him with a receipt listing the documents so removed and an undertaking to return the originals to him after copying the same; or
  - (d) to provide forthwith or by any stated time, any information requested by the Chairman, Vice-Chairmen or the Bar Council touching or bearing upon the instructions received by the barrister and the basis and terms on which he became involved and participated in any specified case or matter including, without limiting the generality of the foregoing, the amount and manner of payment of fees received by him in respect thereof.
- 7.12 The Bar Council shall, in its absolute discretion, be entitled to use or authorize use of the results of such inspection, of copies made of records and of information supplied as aforesaid, as evidence in or otherwise in connection with any disciplinary proceedings brought or contemplated by or on behalf of the Bar Council or the Law Society or, save where the privilege against self-incrimination is claimed, prosecution under the Ordinance.

### **Regarding Preservation of Confidentiality**

- 7.13 (a) A practising barrister must at all times take all reasonable steps to ensure that the papers in any brief or instructions delivered to him and copies thereof and their

contents and other information entrusted by the client to him in confidence, regardless of the forms in which they are presented, stored or kept, are handled, stored and disposed of securely and not accessed by any third persons without authority whether deliberately or accidentally.

- (b) Special or extra care should be taken for cases in which a member or members from the same chambers is/are appearing on opposite sides or for information that is for whatever reasons particularly sensitive.
- (c) Without prejudice to the generality of the foregoing:-
  - (i) Papers, faxes and emails coming into chambers should not be received, handled or distributed in ways that permit them to be overlooked.
  - (ii) Papers should not be left where others can read them.
  - (iii) Computers should be password protected (with the password changed regularly) and should be placed so that they cannot be overlooked, especially when working in public places.
  - (iv) When not being used, papers should be stored in ways that minimise the risk of unauthorised access.
  - (v) Care should be taken to prevent the theft or loss of portable/removable devices such as laptops, removable discs, CDs, USB memory sticks and PDAs used in connection with a barrister's practice. Information should not be stored on such devices in an unprotected manner but should at least be password protected (with the password changed regularly) and preferably encrypted.
  - (vi) One using cloud computing services (under which setups, data and information are processed by a third party-server or application) in his practice should fully appreciate and appropriately manage the risks of disclosure of client confidential information that may arise from such user and should further keep up to date on the technological changes that may impact upon the security of information so stored. Prudent measures would include, but are not limited to, using a cloud provider which conducts, and is contractually bound to conduct, its services in a manner that does not cause one to breach his obligation of confidentiality to clients, adopting the highest

level of security available, regularly changing passwords and encrypting documents.

- (vii) All working drafts containing confidential and privileged information must be disposed of in ways that do not permit access (whether deliberate or accidental) by any third persons. In particular, vigilance should be exercised when recycling paper for drafting purposes.
- (viii) When no longer required, all confidential material should be disposed of securely, for example, by returning it to the person instructing the barrister, shredding papers, permanently erasing information stored electronically and securely disposing of any electronic devices which hold confidential information.
- (ix) A practising barrister who keeps an entry on a social network or internet medium,<sup>20</sup> with details about his work and practice as Counsel, must at all times bear in mind his duty of confidence owed to clients and be vigilant in not disclosing confidential and/or privileged information, whether such entry is accessible by any members of the public or restricted to persons via a password.
- (x) A practising barrister who takes pupils and/or student interns should also warn them against disclosing confidential and/or privileged information of clients.

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<sup>20</sup> Examples are personal blogs, Facebook, Twitter, Weibo, Instagram, etc.

## CHAPTER 8

### PRACTICE PROMOTION

- 8.1 (a) Subject to the overriding duty under paragraphs 3.2 and 4.1, and sub-paragraph (b) hereof, a barrister may engage in advertising or promotion in connection with his practice and such advertising or promotion may include:
- (i) subject to paragraphs 8.3 and 8.4, photographs or other illustrations of the barrister;
  - (ii) statements about the nature and extent of the barrister's services and experience;
  - (iia) statements about the quality of the barrister's work provided that such statements are other than by way of self-assertion and provided that the source of the statement is identified;
  - (iii) statements about the barrister's education, qualifications, affiliations and membership;
  - (iv) statements of rates and methods of charging;
  - (v) information about the barrister's involvement in any case in which the barrister has acted (including the name of any client for whom the barrister has acted) where such information has already become publicly available or, where it has not already become publicly available, with the express prior written consent of the lay client. (*Circular No. 104/17*)
- (b) Advertising or promotion must not:
- (i) be inaccurate, unverifiable or likely to mislead. A statement about the quality of a barrister's work with the source identified is deemed to be verified on proof of the fact that the statement has been made in the said source and accurately quoted;
  - (ii) be likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession or the administration of justice into disrepute;
  - (iii) make comparisons with or criticisms of other barristers, solicitors or members of any other profession;
  - (iv) include statements about the barrister's earnings or success of his practice or his success rate;



- (v) indicate or imply any willingness to accept a brief or instructions or any intention to restrict the persons from whom a brief or instructions may be accepted otherwise than in accordance with this Code;
  - (vi) be intrusive, offensive or otherwise inappropriate having regard to the manner, medium, frequency of approach or surrounding circumstances;
  - (vii) be calculated or likely to exploit or manipulate the weak or vulnerable state of the recipient or intended recipient;
  - (viii) take place in or in the immediate vicinity of a hospital or similar medical establishment, court, tribunal, police station or place of detention;
  - (ix) be directed at a person who has made known a desire not to be contacted;
  - (x) be inappropriate having regard to the best interest of the public;
  - (xi) except where permitted in paragraph 8.1(a)(v), include the name of any professional or lay client. (*Circular No. 104/17*)
- (c) A barrister shall retain for one year after the date of publication a copy or record of each item of advertising or promotional material authorized by him. Any advertising or promotion relating to a barrister shall be presumed, subject to proof by the barrister to the contrary, to have been authorized by him.
- (d) When called upon by the Bar Council to do so, a barrister shall verify the statements made in any advertising or promotional material authorized by him.
- (e) The Bar Council may by notice in writing to a barrister order the alteration or withdrawal of any item of advertising or promotional material where the Bar Council is of the opinion that such material contravenes the provisions in this paragraph.
- (f) The provisions of this paragraph apply to a practising barrister, an employed barrister and a pupil.
- 8.2 (a) The provisions of this paragraph apply to barristers and pupils who hold a law degree from any jurisdiction carrying the word “doctor” as part of the title of the degree (such as, but is not limited to, the degree of Juris Doctor):-
- (i) which does not consist exclusively or predominantly of research work;
  - (ii) the curriculum of which is commensurate with the degree of Bachelor of Laws (or any first degree in common law by whatever name) in a common law jurisdiction; and

- (iii) which does not require the candidate to hold any degree or qualifications in law prior to enrolment in the course.
- (b) A degree is deemed to fall within the description in sub-paragraph (a) hereof even if:-
- (i) part of its curriculum consists of subjects also open to candidates in a Master of Laws degree course offered by the same institution; or
  - (ii) it is, or claims to be, a postgraduate degree in the sense that its candidates are required to hold a Bachelor's degree prior to enrolment in the course.
- (c) Holders of a degree falling within sub-paragraph (a) hereof may, in their practice promotion material, use the initials for the degree (such as "JD") but not
- (i) the word "Doctor" as part of the full English title of the degree; or
  - (ii) the Chinese phrase "博士" as part of the full Chinese title of the degree (if the Chinese title contains the phrase "博士" as part of its full title)
- unless it is also made clear in the same material that the degree carries the characteristics set out in sub-paragraph (a) hereof.
- (d) Holders of a degree falling within sub-paragraph (a) hereof must not, in their practice promotion material, call themselves by the title of "Dr. [name]" or "[name] 博士".
- 8.3 (a) A barrister shall not without leave of the Bar Council appear in wig and/or gown outside the precincts of the court except upon the occasion of the opening of the legal year.
- (b) Save when commuting between chambers and the Courts, a barrister should not appear in public places for any other activities in any form of court dress (such as bands and bar jackets).
- 8.4 A barrister shall not without leave of the Bar Council provide or publish a photograph of himself in wig and/or gown for the purpose of practice promotion.<sup>21</sup>

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<sup>21</sup> In interpreting the phrase, 'for the purpose of practice promotion', the Bar Council adopts a two-stage test such that the phrase will be satisfied if (a) the publication of the photos is subjectively intended for practice promotion; or (b) the publisher should have been aware that in all the circumstances pertaining to his conduct the publication will reasonably be perceived as for the purpose of practice promotion.

## CHAPTER 9

### FEES

- 9.1 A practising barrister may charge for any work undertaken by him:-
- (a) the fee that has been agreed between him and the instructing person before he commences work. In this regard, subject to paragraphs 9.6 and 9.9, it is permissible for a practising barrister to agree with the instructing person to charge a separate fee for each item of work which he is instructed to undertake in the particular case or matter or a lump sum fee for all the work to be undertaken by the barrister in the entire case or matter or on any other basis or by any other method they think fit; or
  - (b) in default of such agreement between the barrister and the instructing person, a proper and reasonable sum in all the circumstances<sup>22</sup>.
- 9.2 Unless otherwise expressly agreed between the barrister and the instructing person before the hearing/trial, the fee marked on a brief covers the barrister's appearance in Court on the first day of the hearing/trial as well as the preparation beforehand including the perusal of papers and the drafting or settlement of skeleton argument/written submissions. Refreshers, if any, must be agreed before the hearing/trial and should be marked on the brief.
- 9.3 A practising barrister may require payment of his fees at the time of accepting a brief or instructions.
- 9.4 A practising barrister may, after a prolonged adjournment of a trial/hearing, require payment, in addition to the agreed or any refresher(s), of a second brief fee if, by reason of the lapse of time, he has to incur substantial time in getting the case up again for the adjourned trial/hearing.
- 9.5 Apart from the payment of fees for professional services or reimbursement of expenses or of disbursements or of agreed interest thereon, a practising barrister must not, whether by himself or through anyone acting for and on his behalf, accept any money, whether by way

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<sup>22</sup> The relevant circumstances may include but are not limited to: the barrister's seniority and experience; his customary charging rates; the complexity of the matter and the difficulty or novelty of the issues involved; the time and effort required of and spent by the barrister; whether any specialised skill, knowledge and/or service has been required and provided; the urgency (if any) and circumstances in which the matter was undertaken; and the liability to which the barrister is exposed by undertaking the matter.

of gift, loan or otherwise, from a lay client, the relative of a client or a business entity of which a client is a director, partner or manager.<sup>23</sup>

- 9.6 A practising barrister may not undertake to represent any person, authority or organisation for a fixed salary; and he may not accept a fixed fee for advising over a fixed period; nor, save in specific circumstances which may be authorised by the Bar Council, may he accept a single brief marked with a single fee to appear on behalf of a client in more than one case or matter.
- 9.7 A practising barrister shall not be deemed to have accepted a brief or to have acquiesced in any fee marked on it until he has had a reasonable opportunity to examine the contents of the brief and to consider other matters relevant to the fee for the purpose of determining the adequacy thereof.
- 9.8 When a brief has been accepted with knowledge of its contents and other matters relevant to the fee, no request may be made for the fee to be increased unless circumstances arise which increase substantially the burden and responsibility on the barrister concerned. In any case where an increase of the original fee is considered to be justified, the person instructing him in the matter must be so informed without delay, and, save in exceptional circumstances, no request for an increase of the original fee may be made at a time so close to the hearing of the case that the person instructing him in the matter would be prejudiced in electing to brief another barrister.
- 9.9 A practising barrister may not accept a brief or instructions on terms that payment of fees shall depend upon or be related to a contingency. For the avoidance of doubt nothing in this rule shall prevent a member from accepting payment of his fees by instalments and payment of interest on his fees either as agreed or allowed on taxation.
- 9.10 In privately-paid cases, it is proper for a practising barrister to discuss and agree the amount of the fee personally with the person instructing him in the matter. He may also do so through his clerk or secretary.
- 9.11 It is the duty of a practising barrister to remunerate his staff as may be agreed between them, provided that no practising barrister shall share or agree to share with any person (including his clerk) his fees by paying a commission or otherwise a percentage of the barrister's earnings.

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<sup>23</sup> This paragraph does not prevent a practising barrister from obtaining a loan at arms' length and on normal commercial terms from a client, the relative of a client or the business entity of which a client is a director, partner or manager if their ordinary business includes lending money.

9.12 The following sub-paragraphs are for the information and guidance of practising barristers:-

- (a) Agreement was reached between the Bar Council and the Council of the Law Society in 1980 relating to “Payment of Counsel’s Fees” and “Marking of Counsel’s Diary”. Details were contained in Circular No. 6/81 subject to the “Revision to Principle 12.04: Solicitors Personally Responsible For Barristers’ Fees” contained in Circular No. 27/97 sent to all members of the Law Society of Hong Kong and are reproduced here as Annexes 9A and 9B.
- (b) It was further agreed between the Bar Council and the Council of the Law Society that a barrister may submit fee notes to instructing solicitors as soon as any particular piece of work is completed, e.g., after the settling of pleadings, the giving of opinions or the holding of a conference, and shall in any event submit, within 2 weeks, a note in relation to outstanding fees when requested to do so by his instructing solicitors. This agreement does not apply to cases where the barrister’s fees have been agreed at a lump sum for a particular matter which is uncompleted. Further the Law Society of Hong Kong has agreed that it is not intended that any particular penalty will be imposed if the fee note is not submitted within the time limit specified above.
- (c) In the case of Direct Access work, it has been agreed between the Bar Council and the Recognised Direct Access Bodies that (i) a barrister shall be entitled to require payment of his fees at the time of accepting instructions; (ii) an interim fee note of the barrister may be submitted at intervals of not less than two months; and (iii) the barrister’s fees shall be paid or challenged promptly and in any event within two months of the submission of his fee note.
- (d) The Bar Council and the Council of the Law Society have set up a joint tribunal to adjudicate disputes regarding counsel’s fees. The terms of reference and procedure of the Joint Tribunal are reproduced here as Annex 9C.

9.13 A practising barrister must:-

- (a) ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the last of the following: payment of his fees, completion of any taxation or determination or assessment of costs in the case or expiry of the time for lodging an appeal against such assessment or determination of that appeal; and
- (b) provide the instructing person with such records or details of the work done as may reasonably be required.

## **CHAPTER 10**

### **CONDUCT OF PROFESSIONAL WORK**

#### **General Provisions**

- 10.1 A practising barrister must not, in the course of practice, engage in conduct which constitutes unlawful discrimination or harassment.
- 10.2 A practising barrister is at all times individually and personally responsible for his own conduct and for his professional work both in Court and out of Court and he must exercise his own personal judgment in all his professional activities.
- 10.3 A practising barrister must not:
- (a) compromise his professional standards in order to please his professional or lay client, the Court or a third party; or
  - (b) permit his absolute independence, integrity and freedom from his personal interests or external pressures to be compromised or do anything in such circumstances as may lead to any inference that his absolute independence, integrity and freedom from his personal interests or external pressures may be compromised.
- 10.4 A practising barrister, while engaging in practice, must not give any undertaking that cannot be fulfilled and must fulfil every undertaking that has been given by him.
- 10.5 A practising barrister must in all his professional activities act promptly, conscientiously and diligently and with reasonable competence and must take all reasonable and practicable steps to ensure that professional engagements are fulfilled punctually. He should not undertake any tasks which:-
- (a) he knows or ought to know he is not competent or sufficiently experienced to handle;
  - (b) he does not have adequate time and opportunity to prepare for, perform or complete; or
  - (c) he cannot discharge within the time requested or otherwise within a reasonable time.

10.6 A practising barrister must in all his professional activities be courteous and civil, and must act in good faith with all those with whom he has professional dealings. He should not send correspondence to or otherwise communicate with any person in a manner that is abusive, offensive or otherwise inconsistent with the proper tone of a professional correspondence or communication.

### **Relation with Persons or Bodies Authorised to Instruct Counsel**

10.7 A practising barrister must not have a seat in the office of any person authorised to instruct him or in the office of the company, firm or other body of which such person is a director, partner, member or employee.

10.8 A practising barrister must not give any person authorised to instruct him or the company, firm or other body of which such person is a director, partner, member or employee any sum of money, whether by way of gift, loan or otherwise, for the purpose of financing the practice of such person or for any other professional purpose.

10.9 Other than the payment of his professional fees, a practising barrister must not accept from any person authorised to instruct him or the company, firm or other body of which such person is a director, partner, member or employee any sum of money, whether by way of gift, loan or otherwise, for the purpose of financing his practice or for any other professional purpose.

10.10 A practising barrister must not give a commission or present or make any payment (other than a payment for practice promotion permitted by this Code) to any person for the purposes of procuring professional instructions or rewarding the giving or introduction of professional instructions.

10.11 A practising barrister should not attend a conference at or visit the office of the person authorised to instruct him in the matter or the office of the company, firm or other body of which such person is a director, partner, member or employee to collect a brief unless there is a good reason for departing from the general rule.<sup>24</sup>

10.12 (a) There is no objection to practising barristers accepting social invitations from persons authorised to instruct him or companies, firms or other bodies of which they are directors, partners, members or employees.

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<sup>24</sup> The mere preference of instructing solicitors or lay clients are not regarded as good reasons. See Circular No.003/15.

- (b) While there is no objection to practising barristers extending social invitations to such persons, companies, firms or other bodies, the invitation must not be intended or be likely to cause the recipient to choose or recommend Counsel having regard to anything other than the client's best interest. Practising barristers should therefore be circumspect in this connection in that lavish or excessive entertainment may lead to the perception that Counsel has been chosen on grounds that are not objective or professional<sup>25</sup>.

### **Duties of Counsel to the Lay Client**

- 10.13 (a) A practising barrister owes his primary duty as between the lay client and any other person to the lay client and must not permit any other person to limit his discretion as to how the interests of the lay client can best be served.
- (b) Subject to sub-paragraph (c) hereof, when supplying legal services to a legally aided lay client, a barrister owes his primary duty to that lay client.
- (c) In a legally-aided civil case, where circumstances have arisen that a barrister becomes of the opinion that he may give up the aided person's case under regulations 12(7) and (8) of the Legal Aid Regulations (Cap 91A)<sup>26</sup>, the barrister must comply with those provisions, which are reproduced at Annex 10.
- 10.14 A practising barrister should always be alert to the possibility of a conflict of interests:-
- (a) If after he has accepted the brief or instructions on behalf of more than one lay client, there is or appears to be a conflict or a risk of conflict between the interests of any one or more of such clients, he must not continue to act for any client unless all such clients give their consent to his so acting and he can do so without embarrassment.
- (b) If he forms the view that there is a conflict of interest between his lay client and the person instructing him in the matter or the company, firm or other body of which

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<sup>25</sup> One should also bear in mind the provisions of paragraph 10.8. For example, the expenditure of a large or excessive sum of money on the entertainment of a solicitor may be regarded as tantamount to a gift to that solicitor and may thus be potentially in breach of paragraph 10.8.

<sup>26</sup> Where the aided person has required the case to be conducted or continued unreasonably (regulation 12(7)) or has wilfully failed to provide the information to be furnished by him or in furnishing such information has knowingly made a false representation (regulation 12(8)(b)) or where there is any other good reason (regulation 12(7)), e.g. where the aided person no longer has a reasonable prospect of success.



such a person is a director, partner, member or employee<sup>27</sup>, the conflict must be resolved in favour of the lay client. In particular, the barrister must consider whether it would be in the lay client's interest to retain another professional adviser or representative and, if he considers that it would be, he must use his best endeavours to have such view communicated to the lay client. (*Circular No. 104/17*)

- 10.15 A practising barrister must promote and protect fearlessly and by all proper and lawful means the lay client's best interests and do so without regard to his own interests or to any consequences to himself or to any other person (including any professional client or other intermediary or another barrister).
- 10.16 A practising barrister has the same privilege as his client of asserting and defending the client's rights by the statement of every fact and the use of every argument that is permitted by the principles and practice of the law.
- 10.17 (a) A practising barrister must, however, not act as the mere mouthpiece of the client or the instructing person and must exercise the professional judgments called for during the case independently, after appropriate consideration of the client's and the instructing person's wishes where practicable.
- (b) A practising barrister will not have breached the barrister's duty to the client, and will not have failed to give reasonable consideration to the client's or the instructing person's wishes simply by choosing, contrary to those wishes, to exercise the professional judgments mentioned in sub-paragraph (a) hereof so as to focus upon those issues which the barrister believes to be the real issues of the case.
- 10.18 (a) The papers in any brief or instructions delivered to a practising barrister and the information and data contained therein are the property of the client.
- (b) A practising barrister must preserve the confidentiality of the client's affairs. He must not, without the prior consent of the client or unless compelled, required or permitted by law, lend the papers in any brief or instructions or reveal their contents or communicate any other information which has been entrusted by the client to him in confidence to any third person (otherwise than as may be necessary for the proper discharge of his duties as Counsel or pupil master) or use such information to the client's detriment or to his own or another person's advantage. This duty of confidentiality continues even after the termination of the relation of Counsel and client.

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<sup>27</sup> For example, because the barrister considers that the person instructing him may have been negligent.

### **Attendance of Instructing Persons or their Representatives**

10.19 Subject to paragraphs 10.20 to 10.22, a practising barrister

- (a) may not appear in Court, or discuss a case or take instructions from or give advice to, his lay client unless the person instructing him or his representative is present;
- (b) unless he is Prosecuting Counsel (to whom paragraph 10.67 applies), may, if necessary, interview his lay client's potential witnesses, and discuss the case or clarify matters with them, provided that the person instructing him or his representative is present.

10.20 Provided that he is satisfied that the interests of the lay client and the interests of justice will not be prejudiced (as where the barrister reasonably takes the view that it will not be necessary in the course of a Court hearing to take instructions from or otherwise seek the assistance of the solicitor or person instructing the barrister), a practising barrister may agree with the person instructing him that the attendance in Court of that person or of his representatives may be dispensed with for all or part of any hearing. It is solely the responsibility of the barrister to decide whether and to what extent the attendance in Court of his professional client or his professional client's representative may be dispensed with.

10.21 Notwithstanding that neither the solicitor nor the person instructing the barrister nor their representatives are present:-

- (a) if the attendance of the person instructing the barrister or of his representative has been dispensed with pursuant to paragraph 10.20; or
- (b) if the barrister arrives at Court for a case in which he has been instructed by a person authorised to instruct him in the matter but neither such person nor his representative is present, and if there are no other grounds on which to request an adjournment and no practicable alternative,

a practising barrister may:-

- (i) conduct the case on behalf of the lay client; and
- (ii) exceptionally, interview supporting witnesses and take proofs of evidence if these are not already available in which case he should inform his opponent.

10.22 In a criminal case or in matters where the lay client is detained pursuant to the provisions of the Immigration Ordinance (Cap 115), a practising barrister may discuss the case with or take instructions from or give advice to the lay client although the person instructing him in the matter or his representative is unable to be present, if such person has given his approval to the communication taking place or the circumstances make it necessary.

### **Drafting or Settlement of Court Documents**

10.23 A practising barrister instructed to draft or settle a court document (be it a pleading, affidavit, witness statement, notice of appeal or other document) is under responsibilities to the Court as well as to his client. He may not:-

- (a) make any allegation unsupported by his instructions;
- (b) allege fraud unless he has clear instructions to make such allegation and he has before him reasonably credible material which, as it stands, establishes a prima facie case of fraud;
- (c) include in any witness statement or affidavit any statement of fact other than the evidence which in substance according to his instructions the barrister reasonably believes the witness would give if the evidence contained in the witness statement or affidavit were being given on oral examination,

provided that nothing in this paragraph shall prevent a barrister from including in a document specific factual statements or contentions subject to confirmation of their accuracy by the lay client or the witness.

10.24 In any criminal appeal to the Court of Appeal, a practising barrister should not settle grounds of appeal unless he considers that the proposed appeal is reasonably arguable.

### **Witnesses**

10.25 A practising barrister must not coach or encourage any witness to give evidence different from the evidence which the witness believes to be true. For the avoidance of doubt, a barrister will not have breached the foregoing by expressing a general admonition to tell the truth, or by questioning and testing in conference the version of evidence to be given by a

prospective witness, including drawing the witness' attention to inconsistencies or other difficulties with the evidence.

- 10.26 Save with the consent of Counsel for the opposing side or of the Court, a practising barrister may not communicate directly or indirectly with a witness, whether or not the witness is his client, once that witness has begun to give evidence until his evidence has been concluded.

### **Alternative Dispute Resolution**

- 10.27 Where appropriate<sup>28</sup>, a practising barrister should consider with his clients the possibility of attempting to resolve a dispute or any particular issue thereof by way of mediation.
- 10.28 A practising barrister instructed to appear as Counsel in a mediation must act honestly, and must not knowingly mislead the mediator or any party to the mediation or their representatives.

### **Duty to the Court and Conduct in Court**

- 10.29 A practising barrister has an overriding duty to the Court to act with candour and independence in the interests of justice.
- 10.30 A practising barrister must not knowingly deceive or mislead the Court.
- 10.31 A practising barrister must not devise facts to advance his client's case.
- 10.32 In all cases it is the duty of a practising barrister to guard against being made the channel for questions or statements which are only intended to insult or annoy either the witness or any other person or otherwise are an abuse of Counsel's function, and to exercise his own judgment both as to the substance and the form of the questions put or statements made.
- 10.33 A practising barrister must not, when conducting his case, assert his personal opinion of the facts or the law to the Court unless invited by the Court to do so.

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<sup>28</sup> On the other hand, if mediation is inappropriate in any given case, Counsel should not advise the client "to go through the motion" without making a genuine attempt to settle the dispute. It is unethical and unprofessional knowingly to participate in a mediation for the purpose of going through the motions, or so as to enable a representation to be made to the Court that mediation has been attempted. See Circular 097/10.

- 10.34 A practising barrister must at all times act with due courtesy to the Court before which he is appearing.
- 10.35 In the interests of the efficient administration of justice and respect for the Court, a practising barrister must use his best endeavours always to be punctual.
- 10.36 A practising barrister must in every case use his best endeavours to avoid unnecessary expense and waste of the Court's time.
- (a) He should, when asked, inform the Court of the probable length of his case.
  - (b) He should also at once inform the Court of any settlement, intention to apply for an adjournment or, provided he can do so without prejudice to his client's interests, other developments or matters which may affect the estimated length of hearing already provided.
- 10.37 Subject to the provisions of this Code, a practising barrister should conduct cases in such manner as in his discretion he thinks will be most to the advantage of his client.
- 10.38 In civil and, subject to the provisions of paragraph 10.60, in criminal cases, a practising barrister must ensure that the Court is informed of any relevant decision or legislative provision, of which he is aware, whether it be for or against his contention.
- 10.39 In all cases, a practising barrister must bring any procedural irregularity of which he is or has become aware to the attention of the Court during the hearing and not reserve such matter to be raised on appeal.
- 10.40 If at any time before judgment is delivered in a civil case, a practising barrister is informed by his lay client that he has committed perjury or has otherwise been guilty of fraud upon the Court, the barrister may not so inform the Court without his client's consent. He may not, however, take any further part in the case unless his client authorises him to inform the Court of the perjured statement or other fraudulent conduct and he has so informed the Court.
- 10.41 In cross-examination which goes to a matter in issue, a practising barrister may put questions suggesting fraud, misconduct or the commission of a crime if he is satisfied that the matters suggested are material to his client's case and he has no reason to believe that they are only put forward for the purpose of impugning the witness's character.

- 10.42 (a) Questions which affect the credibility of a witness by attacking his character, but which are otherwise not relevant to the actual inquiry, may not be put in cross-examination unless there are reasonable grounds to support the imputation conveyed by the questions.
- (b) A practising barrister may regard instructions from the person instructing him that the imputation is well-founded as reasonable grounds to support an imputation conveyed by such questions; but he may not rely on a statement from any other person unless he has ascertained so far as is practicable that the person can give satisfactory reasons for his statement.
- 10.43 A practising barrister must not make submissions impugning a witness whom he has had an opportunity to cross-examine unless in cross-examination he has given the witness an opportunity to answer the allegation.
- 10.44 A practising barrister must, if possible, avoid the naming in open Court of third parties whose character would thereby be impugned. Where necessary, names, addresses and other such details should be written down and handed in to the Court.
- 10.45 If before or during a case, a document belonging to the other side should come into the possession of Counsel, he should if he intends to make any use of it inform his opponent that it has come into his possession. This information should be communicated in sufficient time for the opponent to raise an objection to the use of the document.

### **Dress in Court**

- 10.46 Notes for guidance on dress in Court, which have been issued by the Bar Council with the concurrence of the Chief Justice, are set out in Annex 11.

### **Duties to Opponents**

- 10.47 (a) A practising barrister must not knowingly make a false or misleading statement to an opponent in relation to the case.
- (b) A practising barrister must take all necessary steps to correct any false or misleading statement in relation to the case that has been made by him to an opponent as soon as possible after the barrister becomes aware that the statement was false or misleading.

- (c) A practising barrister does not make a false or misleading statement to an opponent simply by failing to correct an error on any matter stated to the barrister by the opponent.
- 10.48 (a) A practising barrister must not, outside of an *ex parte* application or a hearing of which an opponent has had proper notice, communicate in the opponent's absence with the Court concerning any matter of substance in connection with current proceedings unless:
- (i) the Court has first communicated with the barrister in such a way as to require the barrister to respond to the Court; or
  - (ii) the opponent has consented beforehand to the barrister dealing with the Court in a specific manner notified to the opponent by the barrister, in which case the barrister should confine the communication with the Court to the matters specifically notified by the barrister to the opponent when seeking the consent of the opponent.
- (b) A practising barrister must promptly inform an opponent of what has passed between the barrister and the Court in a communication referred to in sub-paragraph (a) hereof.
- 10.49 A practising barrister shall not disclose to anyone (including his client, the person instructing him and the Court) any communication that he has had with the barrister for another party in connection with the matter in which they are both involved that was made on the basis that it should remain between them and not be disclosed unless and until otherwise agreed (which basis is often conveyed by the use of the shorthand expression "Counsel to Counsel"), save where disclosure of the communication between Counsel becomes necessary for the proper discharge of the barrister's professional duties.
- 10.50 A practising barrister shall not make any allegation of misconduct or dishonesty against another barrister unless such allegation is supported by reasonably credible evidence.
- 10.51 A practising barrister who is led shall inform his counterpart(s) acting for the other party/parties in the case of the fact that leading counsel has been instructed to lead him and shall do so as soon as it is reasonably practicable to enable the other party/parties to have a reasonable opportunity to consider the question of his/their own representation.<sup>29</sup>

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<sup>29</sup> To comply with this paragraph, the opponent(s) should be informed once the retention of leading counsel is confirmed and, where overseas leading counsel is instructed, as soon as the admission of overseas leading counsel is approved by the Court.

## **Duties When Defending a Person Accused of a Crime**

- 10.52 When defending a client on a charge of crime, a practising barrister must endeavour to protect his client from being convicted except by a competent tribunal and upon legally admissible evidence sufficient to support a conviction for the offence with which his client is charged.
- 10.53 A practising barrister may not in cross-examination attribute to another person the crime with which his client is charged unless he can properly do so in accordance with paragraph 10.41; or in any other part of the trial, unless there are facts or circumstances which reasonably suggest the possibility that the crime may have been committed by the person to whom the guilt is imputed.
- 10.54 Subject to paragraphs 6.2 to 6.7 and 6.10, a practising barrister is under a duty to defend any person on whose behalf he is instructed on a criminal charge irrespective of any belief or opinion which he may have formed as to the guilt or innocence of that person.
- 10.55 A practising barrister to whom a confession of guilt has been made by his client must observe the following rules:
- (a) If the confession is made before the proceedings have started he may continue to act only if the plea is to be one of guilty, or if the plea is to be one of not guilty he acts in accordance with the rules set out in Annex 12 which impose very strict limitations on the conduct of the defence. In the latter case he must explain his position to the client and his instructing solicitor. If the barrister is instructed to act otherwise than in conformity with this rule he should return his brief.
  - (b) If the confession is made during the proceedings or in such circumstances that he cannot withdraw without compromising the position of his client, he should continue to act and to do all he honourably can for him; but this situation similarly imposes very strict limitations on the conduct of the defence; and the barrister may not set up an affirmative case inconsistent with the confession by, for example, asserting or suggesting that some other person committed the offence charged or calling evidence in support of an alibi.
- 10.56 (a) It is the duty of defending Counsel to advise his client generally about his plea to the charge. It should be made clear that whether he pleads “not guilty” or “guilty”, the client has the responsibility for and complete freedom of choice in his plea. For the purposes of giving proper advice, Counsel is entitled to refer to all aspects of the



case and where appropriate he may advise his client in strong terms that he is unlikely to escape conviction and that a plea of guilty is generally regarded by the Court as a mitigating factor.

- (b) Where a defendant tells his Counsel that he did not commit the offence with which he is charged but nonetheless insists on pleading guilty to it for reasons of his own, Counsel should
    - (i) advise the defendant that, if he is not guilty, he should plead not guilty but that the decision is one for the defendant;
    - (ii) explore with the defendant why he wishes to plead guilty to a charge which he says he did not commit and whether any steps could be taken which would enable him to enter a plea of not guilty in accordance with his profession of innocence.
  - (c) If the client maintains his wish to plead guilty, Counsel should further advise him what the consequences will be, in particular:-
    - (i) that it is unlikely that a conviction based on such a plea would be overturned on appeal;
    - (ii) that what can be submitted on his behalf in mitigation will have to be on the basis that he is guilty.
  - (d) Counsel must continue to represent the defendant if, following all of the above advice, the defendant persists in his decision to plead guilty.
- 10.57 (a) Subject to paragraph 6.7, it is the duty of defending Counsel to ensure that an accused person is never left unrepresented at any stage of his trial.
- (b) Where an accused is represented by two Counsel neither may absent himself other than for a purely temporary period except for good reason and then only when the consent of the solicitor or his representative and the client is obtained.
  - (c) Where an accused is represented by only one Counsel, that Counsel must normally be present throughout the trial and may only absent himself in exceptional circumstances which he could not reasonably have been expected to foresee and provided (1) he obtains the consent of the solicitor or his representative and his client and (2) a competent deputy takes his place. A deputy is not to be regarded as

competent unless he is well informed about the case and able to deal with any question which might reasonably be expected to arise.

- (d) Sub-paragraphs (a), (b) and (c) hereof are subject to the following modification in respect of lengthy trials involving numerous defendants. Where, after the conclusion of the opening speech by the prosecution, defending Counsel is satisfied that during a specific part of the trial there is no serious possibility that events will occur which relate to his client, he may, with the consent of (1) the person instructing him in the matter or his representative and (2) his client, absent himself for that part of the trial. He should also inform the judge. In this event it is his duty (1) to arrange for other defending Counsel to guard the interests of his client; (2) to keep himself informed throughout of the progress of the trial and of any development which could affect his client; and (3) not to accept other commitments which would render it impracticable for him to make himself available at reasonable notice if the interests of his client so require.
- 10.58 (a) If during the course of a criminal trial and prior to final sentence the defendant voluntarily absconds and the person instructing defending Counsel withdraws from the case, then Counsel too must withdraw.
- (b) If the trial judge requests Counsel to remain to assist the Court Counsel has an absolute discretion whether he does so. If he does, he must act on the basis that his instructions are withdrawn and he will not be entitled to use any material contained in his brief save that part already established in evidence before the Court. He should request the trial judge to instruct the jury that this is the basis on which he is prepared to assist the Court.
  - (c) If, for any reason, the person instructing him in the matter does not withdraw from the case, Counsel retains an absolute discretion whether to continue to act. If he does continue, he should conduct the case as if his client were still present in Court, but had decided not to give evidence (on which see paragraph 10.62(b)) and on the basis of the instructions he has received. He will be free to use any material contained in his brief and may cross-examine witnesses called for the prosecution and call witnesses for the defence.
- 10.59 A practising barrister may appear for more than one defendant in a criminal trial provided he satisfies himself there is no conflict of interest.

- 10.60 Defence Counsel is not under any duty to draw matters of fact or law to the attention of the Court at the conclusion of the summing-up, but he may do so if he believes it would be to the advantage of his client.
- 10.61 Defence Counsel has no duty to advise his client to disclose a previous conviction. If the Court has been led by the prosecution to believe that an accused has no previous convictions, Defence Counsel is under no duty to disclose facts to the contrary which are known to him, nor correct any information given by the prosecution if such disclosure or correction would be to his client's detriment; but Defence Counsel must take care not to lend himself to any assertion that his client has no convictions, or to ask a prosecution witness whether there are previous convictions against his client, in the hope that he will receive a negative answer.
- 10.62 (a) Every accused person has the right to decide whether to give evidence in his own defence. A practising barrister may properly advise his client upon this but it is the accused himself who must make the decision.
- (b) If an accused person instructs his Counsel that he is not guilty of the offences with which he is charged but decides not to give evidence himself, it is the duty of his Counsel to put his defence before the Court and, if necessary, to make positive suggestions to witnesses.
- 10.63 Defence Counsel should not, in a plea in mitigation, make any allegation which is merely scandalous or calculated to vilify or insult any person.
- 10.64 In normal circumstances, it is the duty of Defence Counsel to see his lay client after conviction and sentence, or if he is unable to do this, ensure that the person instructing him in the matter or his representative does so.

### **Duties When Prosecuting a Person Accused of a Crime**

- 10.65 Prosecuting Counsel should not regard himself as appearing for a party.
- 10.66 It is not the duty of Prosecuting Counsel to obtain a conviction by all means at his command but rather to lay before the Court or the jury fairly and impartially the whole of the facts which comprise the case for the prosecution and to assist the Court on or, to see that the jury are properly instructed in, all matters of law applicable to the case.
- 10.67 Prosecuting Counsel:-

- (a) may see and confer with investigator witnesses in the case but only if they have discharged some supervisory responsibility in the investigation;
  - (b) ought not to confer with investigators or receive factual instructions directly from them on particular aspects of evidence to be given by them about which there is known or may reasonably be anticipated to be in dispute.
- 10.68 Prosecuting Counsel should use his best endeavours to see to the proper disclosure of material by the prosecution pursuant to the duties imposed upon it by the law and as supplemented to by the prevailing prosecutorial policy from time to time promulgated by the Department of Justice.
- 10.69 A practising barrister prosecuting an accused person should be present throughout the trial, including the summing-up and the return of the jury. He may not absent himself without leave of the Court, but if two or more barristers appear for the prosecution, the attendance of one is sufficient.
- 10.70 It is the duty of Prosecuting Counsel to assist the Court at the conclusion of the summing-up by drawing attention to any apparent errors or omissions of fact or law which, in his opinion, ought to be corrected.
- 10.71 Prosecuting Counsel should not attempt by advocacy to influence the Court in regard to sentence. Although Prosecuting Counsel must not press for a particular sentence, he should be in a position to assist the Court, if requested, as to any statutory provisions relevant to the offence or the offender and as to any relevant guidelines as to sentence or tariffs laid down by the Court of Appeal. If, however, an accused person is unrepresented, it is proper for Prosecuting Counsel to inform the Court of any mitigating circumstances as to which he is instructed.
- 10.72 When a practising barrister instructed and acting for the prosecution or the defence of an accused has in his possession a copy of a video recording of a child witness which may be admitted as evidence in a criminal trial in accordance with s.79C Criminal Procedure Ordinance, Cap 221 he must have regard to the following duties and obligations:
- (a) Upon receipt of the recording, a written record of the date and time and from whom the recording was received must be made and a receipt must be given.
  - (b) The recording and its contents must be used only for the proper preparation of the prosecution or defence case or of an appeal against conviction and/or sentence and/or

review, as the case may be, and the barrister must not make or permit any disclosure of the recording or its contents to any person except when, in his opinion, it is in the interests of his proper preparation of that case.

- (c) The barrister must not make or permit any other person to make a copy of the recording, nor release the recording to the accused, and must ensure that:
    - (i) when not in transit or in use, the recording is always kept in a secure place, and;
    - (ii) when in transit, the recording is kept safe and secure at all times and is not left unattended, especially in vehicles or otherwise.
  - (d) Proper preparation of the case may involve viewing the recording in the presence of the accused. If this is the case, viewing should be done:
    - (i) if the accused is in custody, only in the prison or other custodial institution where he is being held, in the presence of the barrister and/or his instructing solicitor;
    - (ii) if the accused is on bail, at the solicitor's office or in Counsel's chambers or elsewhere in the presence of the barrister and/or his instructing solicitor.
  - (e) The recording must be returned to the solicitor as soon as practicable after the conclusion of the barrister's role in the case. A written record of the date and time despatched and to whom the recording was delivered for despatch must be made.
- 10.73 (a) Prosecuting Counsel should be alerted to the position of vulnerable witnesses namely, a child, a mentally incapacitated person or a witness in fear, as defined in the Criminal Procedure Ordinance (Cap 221). Considerations ought to be given as to whether an application should be made, and if so, what special arrangements<sup>30</sup> or combination thereof should be sought, to assist a vulnerable witness to give evidence in Court.

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<sup>30</sup> Which may include evidence by live television link, video recorded testimony, priority listing, no postponement of trial, avoidance of delay, arrangement of "support persons", removal of wigs and gowns, and appropriate security for witnesses in fear. There will also be cases where the interests of justice require a screen to be made available to shield a witness from the accused or the public or for the public gallery to be cleared.

- (b) In a case involving a vulnerable witness, if an adjournment of the case is sought to suit Counsel's diary, Prosecuting Counsel is under a duty to alert the Court to Practice Direction PD9.5 ('Evidence by way of Live Television Link or Video Recorded Testimony') which requires cases involving vulnerable witnesses to be given priority for listing purposes.

### **Media Comment**

- 10.74 (a) Practising barristers are under no obligation to express a personal view to the media in relation to anticipated or on-going litigation. Expression of such views is not a legal service, nor is it part of the duties of a barrister to act in the best interests of clients. Accordingly, practising barristers do not have a duty to comply with a request from a client to do so, without the express agreement of the practising barrister.
- (b) When speaking to the media, a practising barrister must be careful not to breach his or her general professional duties (such as to keep the affairs of clients and former clients confidential, and not to bring the administration of justice into disrepute).
- (c) Practising barristers must ensure that any comment they make to the media does not undermine, and is not reasonably seen as undermining, their independence. Furthermore, any such comment must not bring the profession, nor any other barrister into disrepute.
- (d) Practising barristers must act responsibly, and exercise professional judgment, and have regard to the full range of professional duties, in deciding whether to make a personal comment or express a personal opinion on the facts or issues arising in current or anticipated proceedings in which they have been, are, or expected to be involved. The same applies when considering how far any personal comment or opinion can properly go. This is especially important if the proceedings or the comments are likely to attract high levels of media attention.
- (e) A practising barrister should, before making a comment to the media, consider:
- (i) the nature and type of proceedings;
  - (ii) the stage those proceedings have reached;
  - (iii) the nature of proposed comments;
  - (iv) what information is permitted to be conveyed;
  - (v) whether he or she needs the consent of the client; and
  - (vi) the likelihood of prejudice arising from the comments.

- (f) If a practising barrister expresses a personal opinion, it must be honestly held.

## CHAPTER 11

### PUPILLAGE AND DUTIES OF AND GUIDELINES FOR PUPIL MASTERS AND PUPILS

#### Requirement of Approved Pupillage

- 11.1 (a) A person who intends to practise as a barrister must serve the period of approved pupillage which shall, subject to reduction by the Chief Judge, be:-
- (i) a period of not less than 12 months in the chambers of a junior barrister who, save in exceptional circumstances established to the satisfaction of the Bar Council, has continuously practised for not less than 5 years after commencement of full practice at the Bar in Hong Kong; or
  - (ii) a period of not less than 9 months in the Department of Justice, which may include a period not exceeding 3 months on secondment to the Legal Aid Department, so long as he has also spent a period of not less than 3 months in such service as is described in sub-paragraph (i) hereof.
- (b) Subject to the Bar Council's approval, the period of approved pupillage mentioned in sub-paragraph (a) hereof may include:
- (i) any period not exceeding 1 month spent as a judge's marshall in Hong Kong; and
  - (ii) subject to sub-paragraph (c) hereof, any period not exceeding 3 months as a pupil with a Senior Counsel.
- (c) A junior barrister, upon taking silk, may, for the period of one year following his appointment as Senior Counsel or such extended period as the Bar Council may on application approve on a case by case basis<sup>31</sup>, continue with his pre-existing commitments as a pupil master, and any period of pupillage undertaken in such

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<sup>31</sup> For example, the Bar Council may consider an extension where a particular pre-arranged pupillage goes over the one-year period by an insignificantly short time.

circumstances will be counted as having been served with a junior Counsel.

- (d) Without prejudice to pupillages already arranged prior to the effective date of this Code, a pupillage shall start on any one of the following 4 days, unless the Bar Council grants an exemption: 1<sup>st</sup> September, 1<sup>st</sup> December, 1<sup>st</sup> April and 2<sup>nd</sup> July.
- 11.2
- (a) With a view to ensuring a reasonable duration of pupillage for the benefit of the pupil as well as the pupil master who has to certify the pupil's fitness and suitability to practise as a barrister, save in exceptional circumstances, the Bar Council is unlikely to approve pupillage of less than 3 months with any one barrister.
  - (b) One such exception is where the last part of a pupil's 12-month approved pupillage may under certain circumstances<sup>32</sup> turn out to be less than 3 months. Applications for approval of such pupillage will be considered and decided by the Bar Council on a case by case basis, depending on the reason for having to make such arrangement, the duration of such pupillage, the pupillage already served and any other material factors.<sup>33</sup>
- 11.3 Save in exceptional circumstances, a pupil should spend at least 3 months of the period of approved pupillage on criminal work and 3 months on civil work, which should include, but not be limited to, the minimum pupillage requirements suggested in Part II of Annex 13.

### **Practice during Limited Practice**

- 11.4 A person who is a pupil may not accept any instruction to act as a barrister unless he:-
- (a) has been admitted as such;
  - (b) holds a valid limited practising certificate; and
  - (c) has the consent of his pupil master to accept such instruction.

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<sup>32</sup> For example, where the pupil has served a part of his approved pupillage as a judge's marshal under paragraph 11.1(b)(i).

<sup>33</sup> Arrangement of the last part of pupillage in excess of the 12-month minimum period will still be approved. However, if all the pupil's pupil masters including the last certify the pupil's fitness and suitability to practise as a barrister at the end of the 12<sup>th</sup> month, the pupil should apply for a full practising certificate at the end of the 12<sup>th</sup> month for the purpose of carrying on his or her practice. In that case, the last part of the pupillage beyond the 12 month minimum period will effectively be a voluntary arrangement. See Circular No.075/03.



### **Before Taking on a Pupil**

- 11.5 (a) A practising barrister, despite satisfying the minimum qualifying requirement for taking pupils, should, before taking on any pupil, seriously and conscientiously review and consider whether, and should refrain from taking any pupil unless he is satisfied that, his practice is of such a nature, quality and volume as would enable him to fulfil the duties of a pupil master set out in paragraph 11.9(c) and (d) and the pupil to at least comply with the minimum pupillage requirements that the Bar Council may from time to time prescribe.
- (b) Subject to sub-paragraph (a) hereof, all practising barristers who are qualified under rule 9(1)(a) of the B(Q)R, section 10(1)(a) of the B(QAP)R and paragraph 11.1(a)(i) to take on pupils are generally encouraged to do so.

### **Approval of Pupillage**

- 11.6 A practising barrister intending to receive a pupil into his chambers shall apply to the Bar Council for prior approval of such pupillage pursuant to rule 4 of the B(Q)R and section 13(1) of the B(QAP)R in a timely fashion.
- 11.7 In proper discharge of its statutory duties and powers of approval under rule 4 of the B(Q)R and section 13(1) of the B(QAP)R and of revocation of approval under section 13(2)(a) of the B(QAP)R and with a view to ensuring the adequate training and preparation of a pupil for practice at the Bar, the Bar Council does not just indorse or rubber stamp an application for approval of a pupillage by a barrister satisfying the minimum qualifying requirement for taking pupils. The Bar Council shall scrutinise whether such barrister is a fit and suitable person to act as a pupil master, having regard to all material circumstances. Without prejudice to the generality of the foregoing, the Bar Council shall have regard to and may require proof of:
- (a) the nature, quality and volume of the intending pupil master's practice;
- (b) his professional conduct and general integrity. For instance, a pupil master who has been convicted of a criminal or disciplinary offence or who is being charged with such an offence may, depending on the nature and seriousness of the facts or allegations underlying the conviction or charge and the circumstances giving rise to the same, not be considered suitable to take or continue to take pupils;

- (c) his past records as a pupil master so that a pupil master who has previously acted in breach of the duties provided for in paragraphs 11.8 to 11.12 may, depending on the nature and seriousness of the breach, not be considered suitable to continue to take pupils.

A practising barrister making an application for approval to take a pupil shall be prepared to answer any request from the Bar Council and/or the Pupillage Committee for information material to the Bar Council's consideration of such application, failing which approval may be refused.

### **Duties of a Pupil Master**

- 11.8 A practising barrister who acts as a pupil master must not seek or accept any pupillage fee.
- 11.9 A pupil master, including a pupil master in the Department of Justice except where they are expressly or by necessary implication excluded, should at all stages of a pupil's pupillage with him:-
  - (a) act and behave with civility and fairness towards the pupil;
  - (b) ensure that the pupil is well grounded in the rules of conduct, ethics and etiquette of the Bar and follows such guidelines for pupils as may be approved from time to time by the Bar Council;
  - (c) take reasonable steps to ensure that the pupil is exposed to work of sufficient quantity and diversity;
  - (d) more specifically but without prejudice to the generality of sub-paragraph (c) hereof,
    - (i) give the pupil specific and detailed teaching instruction in the drafting of pleadings and other documents;
    - (ii) require the pupil to read his papers and draft pleadings and other documents, including opinions. He should then discuss the drafts personally with the pupil;
    - (iii) require the pupil to accompany him to Court on sufficiently frequent occasions and to take proper notes of the proceedings during those occasions. He should discuss the proceedings with the pupil afterwards;

- (iv) require the pupil to attend conferences and to do the necessary preparation to conduct such conferences;
  - (v) ensure that the pupil has the opportunity to do the work mentioned in sub-sub-paragraphs (i) to (iv) hereof and gain such experience as is appropriate for a person commencing practice in the type of work done by the pupil master, if necessary, by arranging the pupil to see the work of other members of chambers;
  - (vi) endeavour to provide the pupil with an opportunity to see a variety of Court-related work, if necessary, by arranging for the pupil from time to time to accompany other members of his chambers or other barristers to other Courts;
  - (vii) take all reasonable steps to enable the pupil to see the work done by junior members of chambers so that the pupil may have an idea of the type of work which a barrister would do when commencing practice;
- (e) encourage a relationship between himself, his chambers, his colleagues and the pupil whereby the pupil is encouraged to receive information on matters relating to practice, ethics and etiquette;
  - (f) encourage the pupil to attend, and accommodate the pupil for attending, ALE courses, in particular, those which the pupil is required to attend and complete in order to qualify for practice;
  - (g) encourage the pupil to attend such other activities as the Association may from time to time arrange;
  - (h) remunerate the pupil where he has done work of value to him at any stage of his pupillage, notwithstanding that a pupil has no right or expectation to receive remuneration from his pupil master; and
  - (i) act as required of a pupil master under such other rules or guidelines relating to pupillage as may be approved from time to time by the Bar Council.

11.9A Without prejudice to Paragraph 11.9(h) above, a pupil master (excluding any pupil master in the Department of Justice) should at all stages of a pupil's pupillage with him pay a monthly honorarium to the pupil at a minimum rate of HK\$6,000 per month. The pupil master should determine the rate of the honorarium and inform the pupil of such rate before the

commencement of the pupillage. Any failure to pay the honorarium by the pupil master without reasonable excuse may amount to professional misconduct or breach of proper professional standards under Paragraph 11.13 below. However, the pupil has no right of action against the pupil master in default since the payment of honorarium is not intended to be and is not a contractual obligation of the pupil master. (Circular No. 207/18; the new paragraph 11.9A is to take effect for pupillages which commence on or after 1st September 2019)

11.10 During the period of limited practice of a pupil, the pupil master should:-

- (a) use his best endeavours to ensure that the pupil complies with the requirements of paragraph 11.4;
- (b) take a direct interest in and monitor all work the pupil does on his own and, in particular, he should, in relation to all Court appearances by the pupil, give assistance before the pupil goes to Court and discuss with the pupil his performance afterwards;
- (c) take all reasonable steps to ensure that the pupil does not do so much work of his own that his pupillage is impaired; and
- (d) ensure that the pupil does not accept briefs or instructions which are beyond the pupil's capacity.

11.11 At the end of the relevant period of pupillage<sup>34</sup>:-

- (a) A pupil master must satisfy himself before issuing a certificate mentioned in rule 9(3) of the B(Q)R or section 10(4)(a) of the B(QAP)R that the pupil has served his pupillage with diligence and that he is a fit and suitable person to practise as a barrister in Hong Kong. He must have serious regard to whether and how the pupil has performed and complied with such minimum pupillage requirements as the Bar Council may prescribe from time to time including requirements as to completion of the ALE Programme. If he is not so satisfied, it is his duty not to provide such certificate.<sup>35</sup>

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<sup>34</sup> Including one lasting less than 3 months approved under paragraph 11.2(b).

<sup>35</sup> As noted by Lam JA in *Re Youh Alan Chuen Po (Opposed Admission)* [2013] 2 HKLRD 485 at paragraph 8: *"In giving such a certificate, a pupil master performs an important public duty and he has to give a responsible opinion on the suitability of a pupil in such a certificate. It may not be an easy task in some cases. Yet it is a task which the public is entitled to expect a pupil master to perform conscientiously."*

- (b) The assessment of a pupil is an on-going process starting from the commencement of pupillage. A pupil master should forewarn his pupil as soon as he entertains doubt as to the pupil's fitness or suitability to practise as a barrister.
- (c) A pupil master should seriously and conscientiously scrutinise and vet the logbook of such pupillage prepared by the pupil in compliance with paragraph 11.20 and ensure that correct and sufficient information about the nature, volume and quality of the pupil's work during the pupillage is entered in such logbook.<sup>36</sup>
- 11.12 (a) A pupillage is primarily for the benefit of the pupil. With a view to protecting the welfare of a pupil, notwithstanding the prior approval of a pupillage by the Bar Council, a pupil master should always remain sensitive to any change in his circumstances that may adversely affect his suitability to continue to take pupils and should review whether he should continue to act as a pupil master and inform his pupil of the change.
- (b) Without prejudice to the generality of the foregoing, examples are where the pupil master is suffering from prolonged poor health, taking a significant break from practice, experiencing a considerable downturn or adverse change in the nature, quality or volume of his practice, or being charged with a serious criminal or disciplinary offence<sup>37</sup>.
- (c) In case of doubt, pupil masters should seek guidance from the Bar Council.
- 11.13 Breach of the duties provided for in paragraphs 11.8 to 11.12 by a practising barrister serving as a pupil master may, depending on the nature and seriousness of the breach, amount to professional misconduct or breach of proper professional standards.
- 11.14 The general obligations of a judge taking on a pupil as marshal are set out in Part IV of Annex 13.

### **Duties of a Pupil**

11.15 A pupil must take responsibility to:-

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<sup>36</sup> A logbook which is considered to contain inadequate information about the nature, volume and quality of the pupil's work during pupillage will not be accepted, which may delay the issuance of the practising certificate.

<sup>37</sup> Examples are charges involving allegations of dishonesty or violence.

- (a) acquaint himself with the provisions of the Ordinance and its subsidiary legislation, in particular, those relating to pupillage and admission to the Bar; and
- (b) ensure that such provisions as applicable to them are complied with strictly and within time.

An overview of the steps to be taken at various stages of pupillage towards admission and practice under the B(QAP)R and the B(A)R is included at Part I of Annex 13<sup>38</sup>.

11.16 A pupil should apprise himself of and comply with:-

- (a) the provisions of this Code and such other rules or guidelines relating to professional conduct as may be approved from time to time by the Bar Council; and
- (b) the rules of practice, ethics and etiquette of the Bar.

11.17 Pupillage is a training period during which the pupil should at all times:-

- (a) maintain a positive attitude towards his pupillage;
- (b) generally act and behave with humility, respect and decorum towards his pupil masters, members and staff of their chambers, other members of the Bar and staff of the Bar Secretariat;
- (c) be conscientious in receiving the instruction given by his pupil master and apply himself thereto full time with all care and attention as if his pupil master's work were his own;
- (d) have the initiative to ask for instruction from his pupil master and, where appropriate, to seek the consent of his pupil master to see the work of or go to Court with other members, in particular junior members, of his pupil master's chambers;
- (e) have the initiative to discuss with and receive information from his pupil master on all matters relating to practice, ethics and etiquette at the Bar;

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<sup>38</sup> For the avoidance of doubt, the flowchart at Part I of Annex 13 and its annotations are included for convenience and are not a substitute for reference to the Ordinance and the subsidiary legislation under it relating to pupillage and admission. In particular, pursuant to the B(QAP)R, applications for various certificates from the Association at various stages of pupillage shall be made in accordance with the prescribed forms contained in Schedule 2 to such Rules. The Bar Council has no discretion to waive any non-compliance with the prescribed forms and will not accept any applications made on non-complying form. To avoid unnecessary delay in the processing of their applications, pupils must take responsibility to ensure that their applications adhere strictly to the prescribed forms. See Circular No.037/04.

- (f) seek guidance from his pupil master and, where appropriate, other members of his pupil master's chambers as to the type of work which he is likely to do when he commences practice and as to how such work ought to be done;
- (g) preserve the confidentiality of the affairs of his pupil master, his pupil master's clients or the clients of any members of his pupil master's chambers as set out in paragraph 10.18;
- (h) not expect to be so remunerated, although his pupil master should remunerate him for work of value;
- (i) not, without the prior approval of his pupil master, render professional advice to or do work for his pupil master's clients on behalf of his pupil master;
- (j) ensure that he performs with diligence such minimum activities as the Bar Council may from time to time require as part of pupillage; and
- (k) dress appropriately at all occasions attended by him as a pupil.<sup>39</sup>

11.18 Unless exempted by the Bar Council:-

- (a) Subject to the Bar Council's powers under sections 6 and 8 of the B(ALER)R to accredit any course that is similar in nature to an ALE course attended by a pupil before the commencement of pupillage and to exempt a pupil from any or all of the ALE requirements, a pupil must during the period of his approved pupillage:
  - (i) obtain the number of ALE points required by section 4(1) of the said Rules; and
  - (ii) keep a record of all the ALE courses he has attended in the form approved by the Bar Council.
- (b) The Bar Council takes a serious view of any failure to do so and may pursuant to section 7(1) of the B(ALER)R:-

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<sup>39</sup> Examples are ALE events including those held outside of the Association's premises such as advocacy workshops, Duty Lawyer Orientation Visits and Magistrates Court Marshalling. T-shirts, jeans, sneakers and other casual wear are not acceptable. The provisions in this Code relating to dress in Court is also a good guide of what is appropriate for professional occasions outside Court.

- (i) refuse to extend the validity of any limited practising certificate beyond the end of the period of approved pupillage;
  - (ii) refuse to issue a new limited practising certificate; or
  - (iii) defer issuing a full practising certificate until the pupil has obtained the requisite number of ALE points.
- (c) The Bar Council may, on application<sup>40</sup>, grant a limited or full practising certificate on an undertaking to obtain the requisite number of ALE points. However, whether to do so or not is at the absolute discretion of the Bar Council, which is unlikely to be exercised in favour of the pupil in the absence of substantiated good reasons.
- (d) All pupils are encouraged to take full advantage of the ALE Programme and attend as many ALE courses as possible in addition to the number of mandatory minimum ALE points.
- (e) When attending an ALE course, a pupil should conduct himself in the same professional manner as a practising barrister is expected to do in carrying on his practice. Without prejudice to the generality of the foregoing, he should:-
- (i) manage his diary in such a way as to give priority to an ALE course for which he has registered and reserved a place;
  - (ii) inform the Bar Secretariat in advance with reasons if he should become unable to attend an ALE course for which he has registered and reserved a place;
  - (iii) if given instructions to do so, prepare for workshops as required in an honest, diligent and timely manner;
  - (iv) be punctual, failing which the pupil will be refused entry;
  - (v) turn up in professional attire as though someone was appearing before a Judge in Chambers;
  - (vi) generally, show respect to the occasions, the organisers, the speakers and other attendees.

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<sup>40</sup> Such application should be made in writing to the Director of Advanced Legal Education and should give a full explanation of the reason(s) for the pupil's failure to obtain the required ALE points in the given period and provide relevant documentary evidence.



11.19 During the period of limited practice, a pupil should:-

- (a) only take on such work as his pupil master allows him to, since there is no entitlement to practise as such;
- (b) where his pupil master has allowed him to take on a case, consult and discuss with his pupil master in relation to all aspects of the case; and
- (c) ensure that he does not do so much work of his own so that his pupillage training is impaired.

11.20 At the end of each pupillage that is counted towards the period of approved pupillage, a pupil should seriously and conscientiously compile and fill in a pupillage logbook (as per the format shown in Part III of Annex 13) and ensure that correct and sufficient information about the nature and quantity of his work during the pupillage is entered in such logbook.<sup>41</sup>

11.21 The spirit of paragraphs 11.18 and 11.19 apply equally to a pupil acting as a Judge's marshal.

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<sup>41</sup> A logbook which is considered to contain inadequate information about the nature, volume and quality of the pupil's work during pupillage will not be accepted, which may delay the issuance of the practising certificate.

## CHAPTER 12

### FOREIGN LAWYERS

#### PERFORMING WORK OF A BARRISTER IN HONG KONG

- 12.1 A foreign lawyer must first be admitted as a barrister in Hong Kong and be issued with a practising certificate before he is entitled to perform any work of a barrister in Hong Kong.<sup>42</sup>
- 12.2 A foreign lawyer who has been admitted as a barrister in Hong Kong on an *ad hoc* basis for the purposes of a specific case or cases under section 27(4) must not conduct any proceedings, provide any other legal service or accept any brief or instruction to do so in relation to the case or cases for which he has been admitted otherwise than in accordance with the basis upon which his admission was granted, including his being instructed with a local junior Counsel and/or a local Senior Counsel (as the case may be).
- 12.3 Save where a provision is expressly or by necessary implication made inapplicable, this Code applies to and binds any foreign lawyer who has been admitted as a barrister in Hong Kong on an *ad hoc* basis for the purposes of a specific case or cases under section 27(4).
- 12.4 A foreign lawyer who has been admitted in Hong Kong as a barrister on an *ad hoc* basis for the purposes of a specific case or cases under section 27(4) may not, while in Hong Kong, conduct any proceedings, provide any other legal service or accept any brief or instruction to do so otherwise than in relation to the case or cases for which he has been admitted.

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<sup>42</sup> Any person who, not being a qualified barrister, either directly or indirectly, practises or acts as a barrister is guilty of a criminal offence and may be fined up to HK\$500,000 on summary conviction under section 44(1)(a). The qualifications for practice as a barrister can be found in section 31.

## CHAPTER 13

### **SPECIAL RULES FOR PRACTISING BARRISTERS UNDERTAKING ARBITRATION, FOREIGN WORK OR WORK IN HONG KONG WITH CERTAIN OVERSEAS CONNECTIONS**

- 13.1 Notwithstanding any provisions to the contrary in this Code, subject to compliance with local laws and to rules of professional conduct, ethics and etiquette which national or local Bars or lawyers' associations may prescribe, a practising barrister may do any of the following:
- (a) accept instructions from any person for the purposes of, or in connection with any arbitration, mediation (under the Arbitration Ordinance (Cap 609), Laws of Hong Kong) or adjudication whether taking place in or outside Hong Kong ("Arbitration Work") provided that the work required to be done does not involve the performance of substantial administrative work not normally performed by a practising barrister in Hong Kong;
  - (b) accept instructions from any person registered as a foreign lawyer in Hong Kong to provide legal services other than Arbitration Work (which is permitted under sub-paragraph (a) hereof), provided that the work required to be done:-
    - (i) is not in a matter in which proceedings by way of litigation in Hong Kong have been instituted;
    - (ii) does not involve the drafting of documents for the purpose of, or in connection with, the institution of litigation in Hong Kong other than a letter before proceedings;
    - (iii) does not involve the performance in Hong Kong of substantial administrative work not normally performed by a practising barrister in Hong Kong; and
    - (iv) is not conveyancing or other work usually performed exclusively by solicitors in Hong Kong;
  - (c) accept instructions to provide legal services (other than Arbitration Work which is permitted under sub-paragraph (a) hereof) in Hong Kong from a lay client where the lay client carries on business outside Hong Kong or usually lives outside Hong Kong ("overseas lay client") or from a lawyer or legal practitioner practising outside Hong

Kong (who is not a Hong Kong solicitor or registered foreign lawyer) where the following conditions are satisfied:-

- (i) the instructions emanate from outside Hong Kong;
  - (ii) the work is not in a matter in which proceedings by way of litigation in Hong Kong have been instituted;
  - (iii) the work does not involve the drafting of documents for the purpose of, or in connection with, the institution of litigation in Hong Kong other than a letter before proceedings;
  - (iv) the work does not involve the performance in Hong Kong of substantial administrative work not normally performed by a practising barrister in Hong Kong; and
  - (v) the work is not conveyancing or work usually performed exclusively by solicitors;
- (d) accept instructions from any person to provide legal services (other than Arbitration Work which is permitted under sub-paragraph (a) hereof):-
- (i) relating to matters essentially arising, taking place, or contemplated outside Hong Kong, which has to be performed outside Hong Kong; or
  - (ii) whether or not to be performed in Hong Kong, for the purpose of, or in connection with, litigation or arbitration outside Hong Kong, which does not involve the performance in Hong Kong of substantial administrative work not normally performed by a practising barrister in Hong Kong;
- (e) accept instructions to observe litigation, arbitration, mediation or other proceedings taking place in Hong Kong for the purpose of providing a report to any person (commonly known as a “watching brief”);
- (f) negotiate fees for legal services provided within sub-paragraphs (a) to (e) hereof directly with the person instructing him, enter into a binding and enforceable agreement as to the provision of such legal services, including as to fees and expenses, and if necessary take such steps as may be available to enforce payment of fees and expenses including to sue for their recovery by litigation or arbitration;

- (g) in relation to legal services provided within sub-paragraphs (a) to (e) hereof, accept (otherwise than as an employee) an annual fee or retainer, a fixed fee or, for legal services provided outside Hong Kong, a contingent fees or conditional fees, in jurisdictions where contingency fees or conditional fees are permitted, and at his or her sole discretion agree any reduction in fees provided, for the avoidance of doubt, that no barrister may receive or hold any funds on trust on account of his fees; and
- (h) enter into any association (including partnership) with any lawyer for the purposes of sharing any office or services outside Hong Kong or providing, or sharing fees relating to, any legal services falling within sub-paragraphs (a) to (e) hereof, provided that no such association shall be created or subsist with any Hong Kong admitted solicitor, Hong Kong registered foreign lawyer, or a firm of solicitors or foreign lawyers practising in Hong Kong or with members of any other professions without the prior permission of the Bar Council.

13.2 Save and except as provided in paragraph 13.1, a practising barrister may not accept instructions to provide any legal services whether in or outside Hong Kong otherwise than in accordance with the provisions of this Code.

## CHAPTER 14

### **PRACTISING BARRISTERS WHO ARE ALSO QUALIFIED, AND PRACTISING CONCURRENTLY IN HONG KONG, IN ANOTHER SYSTEM OF LAW**

- 14.1 A practising barrister who is also qualified in another system of law, and practises concurrently in Hong Kong by virtue of that other qualification, shall observe all rules of professional conduct, ethics and etiquette applicable to a Hong Kong barrister in the course of his Hong Kong practice (including where relevant Chapter 13).
- 14.2 A barrister may, as part of his foreign practice, give advice on Hong Kong law in circumstances where that advice is incidental and subsidiary to the conduct of his foreign practice in a particular case.
- 14.3 For the purposes of paragraphs 14.1 and 14.2:-
- (a) “foreign practice” means advising on, or drafting documents to be governed by, the other system of law in which the barrister is qualified, or appearing before a tribunal whose constitution and procedure is governed by that system of law, and where the barrister is qualified in the law of one state or province of a federal constitution, includes the law of every other state or province and the federal law of that constitution;
  - (b) any other professional activity not covered by sub-paragraph (a) above shall be regarded as Hong Kong practice, unless the Bar Council shall by prior dispensation have ruled that it may be considered foreign practice.
- 14.4 Whether any activity outside Hong Kong is Hong Kong practice or foreign practice depends on the circumstances of the particular case.

## CHAPTER 15

### EMPLOYED AND NON-PRACTISING BARRISTERS GENERAL PRINCIPLES

- 15.1 Save as permitted or empowered by law to do so, an employed or non-practising barrister may not without the permission of the Bar Council, be employed in any capacity by a firm of solicitors, or act as a Judge's clerk or barrister's clerk, or in any capacity whereby directly or indirectly supply legal advice or services to the public or a section of the public save insofar as he is permitted by any rule of law to do so.
- 15.2 Paragraph 15.1 is not infringed by a barrister who is an employee of a firm or company (other than a firm of solicitors) and who supplies legal advice or services to his employer, or to any director, officer or employee of his employer on matters relating exclusively to his employer's business and affairs and to matters arising out of that person's office or employment, provided that:
- (a) he does not himself supply legal advice or services to the public or a section of the public, and
  - (b) the firm or company is not wholly or in part a device whereby the barrister himself (with or without others) is intended directly or indirectly to supply legal advice or services to the public or a section of the public.

Lecturing, teaching and the writing of articles in newspaper or journals shall not be considered the supply of legal advice or services to the public.

- 15.3 Neither an employed barrister nor a non-practising barrister may appear before a Court as Counsel unless empowered to do so by law.
- 15.4 Neither an employed barrister nor a non-practising barrister may instruct a practising barrister directly without the intervention of a solicitor, save that an employed barrister may do so if he is empowered to do so by law<sup>43</sup>.

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<sup>43</sup> Section 31C(5) allows an employed barrister who holds an employed barrister's certificate to instruct Counsel directly on behalf of his employer but for the purpose of obtaining a legal opinion only.

**ANNEX 1 AND 2**  
**(paragraph 5.7(a))**

**LIST OF OCCUPATIONS WITHOUT THE NEED TO GIVE PRIOR WRITTEN  
NOTIFICATION**

The following occupations are occupations which a practising barrister may engage in, without having to give prior written notice to the Bar Council:-

- (1) Recorder or deputy judge, magistrate or coroner or any other acting judicial positions;
- (2) Member of Executive Council;
- (3) Member of Legislative Council;
- (4) Member of any District Council;
- (5) Member of the Heung Yee Kuk or any rural committee;
- (6) Acting as a “Village Representative” as defined under the Village Representative Election Ordinance (Cap 576);
- (7) Lecturing or teaching in law, or administering any Law Faculty or Law School or any departments thereof of any university, whether in Hong Kong or elsewhere;
- (8) Practising as a legal practitioner (of whatever description) in another jurisdiction;
- (9) Law reporting;
- (10) Caring for immediate family members.
- (11) Legal
  - (a) Offices
    - (i) Third Party Neutral in alternative dispute resolution procedures, including Mediator, Adjudicator, Arbitrator or Umpire
    - (ii) Member of a board of review, board or commission of inquiry, tribunal, panel or committee established under any statutory or administrative powers
  - (b) Occupations
    - (i) Examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like
    - (ii) Advising producers of plays and films on such matters
    - (iii) Running a private law tutorial school
    - (iv) Acting as a trustee for remuneration provided for in the settlement
    - (v) Acting as unpaid or honorary legal adviser to any charitable, benevolent or philanthropic institution, including a company that has been established for such purpose
- (12) Legal or Non-Legal
  - (a) Writing, editing, and reviewing books and periodicals



- (b) Journalism
  - (c) Broadcasting
  - (d) Member of a non-trading body established under any statutory or administrative powers
- (13) Non-Legal
- (a) Business
    - (i) Non-executive director of a company (whether public or private) or chairman, director, secretary of a company not actively engaged in trade or business
    - (ii) Chairman, secretary, officer or member of the board of a co-operative society, a management committee of the incorporated owners of a building
    - (iii) Landlord of rented accommodation
  - (b) Charities  
Officer, trustee or governor of any charitable, benevolent or philanthropic institution, and where a company has been established for such purpose, chairman, director or secretary of such company  
(Circular No. 206/18)

**ANNEX 3**  
**(paragraph 5.17(a))**

**LIST OF PERSONS OR BODIES AUTHORISED BY CUSTOM OR  
THE BAR COUNCIL TO INSTRUCT COUNSEL DIRECTLY**

1. Persons or bodies authorised by custom to instruct barristers directly without the intervention of a solicitor:-
  - (a) Patent and Trade Mark Agents.
  
2. Persons or bodies authorised by the Bar Council to instruct barristers directly without the intervention of a solicitor:-
  - (a) The Court;
  - (b) The Department of Justice;
  - (c) The Director of Legal Aid;
  - (d) The Duty Lawyer Service for appearance at the Magistrates Courts, Juvenile Courts and Coroners Courts;
  - (e) The Duty Lawyer Service for provision of legal advisory service at its Legal Advice Centres;
  - (f) The Duty Lawyer Service for provision of legal assistance under its Convention Against Torture Scheme;
  - (g) The Bar Free Legal Service Scheme;
  - (h) The Medical, Dental and Chiropractors' Councils; the Veterinary Surgeons Board; the Licensing Appeals Board and other tribunals or bodies exercising judicial or quasi-judicial functions as established by statute for provision of advisory service to such bodies;
  - (i) Foreign lawyers or lay clients in respect of work falling within paragraph 13.1(a) to (e).

- (j) The Civil Service Bureau for the purpose of provision of advisory service to an Inquiry Officer or an Inquiry Committee appointed under the Public Service (Administration) Order. (*Circular No. 148/18*)

## ANNEX 4

(paragraphs 5.17(b) & 5.18(b))

### LIST OF RECOGNISED DIRECT ACCESS BODIES AND THEIR RESPECTIVE QUALIFIED INSTRUCTING MEMBERS OR OFFICERS

1. The Hong Kong Institute of Certified Public Accountants

|                               |   |
|-------------------------------|---|
| Address                       | 37/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong |
| Telephone                     | 2287 7228 / 2528 9000 (Hotline)                                 |
| Fax                           | 2865 6776 / 2865 6603   |
| Qualified Instructing Members | Any member  |

2. The Hong Kong Institute of Chartered Secretaries

|                               |  |
|-------------------------------|--|
| Address                       | 3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong |
| Telephone                     | 2881 6177  |
| Fax                           | 2881 5050  |
| Qualified Instructing Members | Any member   |

3. The Chartered Institute of Arbitrators

|                               |   |
|-------------------------------|---|
| Address                       | International Arbitration & Mediation Centre, 12 Bloomsbury Square, London WC1A 2LP, United Kingdom |
| Telephone                     | +44 (0)20 7421 7444   |
| Fax                           | +44 (0)20 7404 4023   |
| Qualified Instructing Members | Any member  |

(Note: In respect of direct access by members of the Chartered Institute of Arbitrators, the Direct Access Rules, and the recommended standard terms of engagement in Annex 6A (as opposed to those in Annexes 5 and 6) shall, unless and to the extent that they are excluded or

varied by agreement between the Instructing Member and the barrister whom he instructs in any particular matter, apply.)

4. The Taxation Institute of Hong Kong

|                               |  |
|-------------------------------|--|
| Address                       | 21/F, Kam Sang Building, 255-257 Des Voeux Road Central, Hong Kong |
| Telephone                     | 2810 0438  |
| Fax                           | 2523 1263  |
| Qualified Instructing Members | Any member   |

(Note: In respect of direct access by members of The Taxation Institute of Hong Kong, the Direct Access Rules, and the recommended standard terms of engagement in Annex 6B (as opposed to those in Annexes 5 and 6) shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Member and the barrister whom he instructs in any particular matter, apply.)

5. The Hong Kong Institute of Surveyors

|                               |  |
|-------------------------------|--|
| Address                       | Suite 801, 8/F, Jardine House, 1 Connaught Place, Central, Hong Kong |
| Telephone                     | 2526 3679  |
| Fax                           | 2868 4612  |
| Qualified Instructing Members | Any associate or fellow member                                       |

(Note: In respect of direct access by members of The Hong Kong Institute of Surveyors, the recommended standard terms of engagement in Annex 6C (as opposed to those in Annex 6) shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Member and the barrister whom he instructs in any particular matter, apply.)

6. The Office of the Ombudsman, Hong Kong

|           |   |
|-----------|---|
| Address   | 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong |
| Telephone | 2629 0533   |
| Fax       | 2882 8149   |

|                                |   |
|--------------------------------|---|
| Qualified Instructing Officers | <p>The following officers of The Office of the Ombudsman, Hong Kong:</p> <p>(a) All Directorate Officers, i.e. Deputy Ombudsman and Assistant Ombudsman;</p> <p>(b) All Complaints Officers comprising Chief Complaints Officers, Senior Complaints Officers and Complaints Officers; and</p> <p>(c) Chief Executive Officer, Senior External Relations Officer, Senior Office Administrator and Accountant</p> |
|--------------------------------|---|

(Note: In respect of direct access by The Office of the Ombudsman, Hong Kong, the recommended standard terms of engagement in Annex 6D (as opposed to those in Annex 6) shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Officer and the barrister whom he instructs in any particular matter, apply.)

7. The Legal Aid Services Council

|                                |  |
|--------------------------------|--|
| Address                        | Room 1601, 16th Floor, Top Glory Tower, 262 Gloucester Road, Causeway Bay, Hong Kong |
| Telephone                      | 2838 5378  |
| Fax                            | 2838 5053  |
| Qualified Instructing Officers | The Legal Aid Services Council   |

(Note: In respect of direct access by the Legal Aid Services Council, the recommended standard terms of engagement in Annex 6E (as opposed to those in Annex 6) shall, unless and to the extent that they are excluded or varied by agreement between the Legal Aid Services Council and the barrister whom it instructs in any particular matter, apply.)

8. The Office of the Privacy Commissioner for Personal Data

|                                |   |
|--------------------------------|---|
| Address                        | 12/F, 248 Queen's Road East, Wanchai, Hong Kong   |
| Telephone                      | 2827 2827   |
| Fax                            | 2877 7026   |
| Qualified Instructing Officers | <p>The following officers of The Office of the Privacy Commissioner for Personal Data:</p> <p>(a) Privacy Commissioner for Personal Data;</p> <p>(b) Deputy Privacy Commissioner for Personal Data;</p> <p>(c) Chief Legal Counsel;</p> |

|  |                                 |
|--|---------------------------------|
|  | (d) Senior Legal Counsel;       |
|  | (e) Legal Counsel; and          |
|  | (f) Chief Personal Data Officer |

(Note: In respect of direct access by the Office of the Privacy Commissioner for Personal Data, the recommended standard terms of engagement in Annex 6F (as opposed to those in Annex 6) shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Officer and the barrister whom he instructs in any particular matter, apply.)

9. The Estate Agents Authority

|                                |   |
|--------------------------------|---|
| Address                        | 48/F, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong  |
| Telephone                      | 2598 9550   |
| Fax                            | 2598 9596   |
| Qualified Instructing Officers | The following officers of the Estate Agents Authority:<br>(a) The Chief Executive Officer;<br>(b) Director of Services;<br>(c) Director of Operations;<br>(d) Director of Regulatory Affairs and General Counsel;<br>(e) Legal Counsel;<br>(f) Senior Manager (Operations);<br>(g) Manager (Complaints);<br>(h) Manager (Enforcement);<br>(i) Manager (Legal Services & Examination);<br>(j) Manager (Disciplinary Proceedings);<br>(k) Manager (Licensing);<br>(l) Manager (Corporate Communications);<br>(m) Manager (Human Resources & Administration);<br>(n) Manager (Professional Development); and<br>(o) Manager (Finance & Information Technology) |

(Note: In respect of direct access by the Estate Agents Authority, the recommended standard terms of engagement in Annex 6G (as opposed to those in Annex 6) shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Officer and the barrister whom he instructs in any particular matter, apply.)

10. Equal Opportunities Commission

|                                |   |
|--------------------------------|---|
| Address                        | 19/F, Cityplaza Three, 14 Taikoo Wan Road, Taikoo Shing, Hong Kong  |
| Telephone                      | 2106 2178   |
| Fax                            | 2824 3892   |
| Qualified Instructing Officers | The following staff of the Equal Opportunities Commission acting personally and as a representative of the Commission:-<br>(a) Chairman;<br>(b) Director of Operations;<br>(c) Chief Legal Counsel;<br>(d) Legal Counsel;<br>(e) Assistant Legal Counsel. |

(Note: In respect of direct access by the Equal Opportunities Commission, the recommended standard terms of engagement in Annex 6H (as opposed to those in Annex 6) shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Officer and the barrister whom he instructs in any particular matter, apply.)

11. The Hong Kong Institute of Arbitrators

|                               |  |
|-------------------------------|--|
| Address                       | c/o Hong Kong International Arbitration Centre, 38/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong |
| Telephone                     | 2525 2381  |
| Fax                           | 2524 2171  |
| Qualified Instructing Members | Any members  |

(Note: In respect of direct access by members of the Chartered Institute of Arbitrators, the Direct Access Rules, and the recommended standard terms of engagement in Annex 6A (as opposed to those in Annexes 5 and 6) shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Member and the barrister whom he instructs in any particular matter, apply.)

12. The Hong Kong Institution of Engineers

|           |   |
|-----------|---|
| Address   | 9/F Island Beverley, 1 Great George Street, Causeway Bay, Hong Kong |
| Telephone | 2895 4446   |
| Fax       | 2577 7791   |
| Qualified | Corporate Member (i.e. a Fellow or a Member of the Hong Kong        |



|                     |                           |
|---------------------|---------------------------|
| Instructing Members | Institution of Engineers) |
|---------------------|---------------------------|

(Note: In respect of direct access by members of the Hong Kong Institution of Engineers, the Direct Access Rules, and the recommended standard terms of engagement in Annex 6I (as opposed to those in Annex 6) shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Member and the barrister whom he instructs in any particular matter, apply.)

13. The Financial Dispute Resolution Centre

|                               |   |
|-------------------------------|---|
| Address                       | Unit 3701-4, 37/F, Sunlight Tower, 248 Queen's Road East, Wan Chai  |
| Telephone                     | 3199 5100   |
| Fax                           | 2565 8662   |
| Qualified Instructing Members | The Secretary to the FDRC Disciplinary Committee, the (Assistant) Dispute Resolution Manager of the FDRC or the Complaint Officer for the disciplinary procedures on behalf of the FDRC |

(Note: In respect of direct access by members of the Financial Dispute Resolution Centre, the Direct Professional Access Rules, and the recommended standard terms of engagement in Annex 6J shall, unless and to the extent that they are excluded or varied by agreement between the Instructing Member and the barrister whom he instructs in any particular matter, apply.)

**ANNEX 5**  
**(paragraph 5.17(b))**

**DIRECT ACCESS RULES**

1. Unless otherwise stated, words and expressions used in these rules shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force.
2. Subject to these rules, a practising barrister may accept Direct Access work upon the instruction of a Qualified Instructing Member or Officer of a Recognised Direct Access Body.
3. A practising barrister shall only be entitled to accept instructions in Direct Access work from a Qualified Instructing Member or Officer of a Recognised Direct Access Body who must:-
  - (a) be his first point of contact;
  - (b) be identified at the time of giving instructions; and
  - (c) confirm that he or the company, firm or other body of which he is a director, partner, member, officer 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.

The Instructing Member or Officer may be a director, partner, member, officer 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 barrister promptly in addition to such other liability as may be agreed between the barrister and the Instructing Member or Officer 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, officer or employee will also be liable jointly with the Instructing Member or Officer.

4. A practising barrister shall not accept any brief or instructions in Direct 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 Access work and stating the period for which he is so insured has been supplied to the Bar Council.

5. A practising barrister must not accept any brief or instructions in Direct Access work:-
  - (a) to receive, disburse or otherwise handle clients' money, securities or other assets other than by receiving payment of his fees;
  - (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; or
  - (d) to appear in the Court of Final Appeal, the High Court, the District Court or a Magistrate's Court.
6. A practising barrister, having accepted a brief or instructions in Direct Access work, shall decline to act further at any stage when he considers it in the interests of the lay client that a solicitor be instructed.
7. A practising barrister who accepts Direct 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 all 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 Access matters.
8. Nothing in these rules shall affect any other rules in the Code entitling a practising barrister to accept instructions from any person other than a solicitor.
9. Save as is in these rules otherwise provided, the Code shall apply to instructions received and accepted under these rules.

**ANNEX 6**  
**(paragraph 5.18(c)(i))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT  
OF A PRACTISING BARRISTER UNDERTAKING  
DIRECT ACCESS WORK**

**Preamble**

- (i) These Standard Terms of Engagement have been approved by the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a Qualified Instructing Member or Officer of a Recognised Direct Access Body in accordance with the Direct Access Rules in Annex 5.
- (iii) Any Qualified Instructing Member or Officer of a Recognised Direct Access Body will be deemed to instruct a practising barrister on these Standard Terms unless and to the extent that they are excluded or varied by agreement between that member or officer and the barrister whom he instructs in any particular matter.

**Definitions**

Unless otherwise stated, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes of the Code.

**Instructions**

- 1. A practising barrister has the right in circumstances set out in the Direct Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.
- 2.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Member or Officer of a Recognised Direct Access 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, officer 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 Qualified Instructing Member or Officer of such a body wishing to instruct a practising barrister to identify himself as the instructing

member or officer 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, officer or employee is insured against claims for professional negligence in respect of the matter giving rise to such instructions.

3. (i) A practising barrister may only accept instructions from a Qualified Instructing Member or Officer of a Recognised Direct Access Body in a matter of a kind which falls generally within the professional expertise of that member of that body (in the case of a professional body) or within the duties, responsibilities, professional expertise and/or practice of that officer of that body (in the case of a statutory body).
- (ii) An instructing member or officer 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 or operates.
4. (i) An instructing member or officer should, in addition to instructing the barrister in his personal capacity, instruct the barrister in his capacity as a director, partner, member, officer or employee of a company, firm or other body.
- (ii) The instructing member or officer 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 or officer 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 or officer 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 Direct Access in accordance with the Direct Access Rules.
7. Without prejudice to any other right which a practising barrister may have in accordance with the Code 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 or officer 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) The barrister shall inform the instructing member or officer 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 the barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another practising barrister to be engaged and to master the brief.

### **The Barrister's Fees**

9. It is the obligation of the instructing member or officer, jointly with the company, firm or other body of which he is a director, partner, officer, 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 or officer.

13. In the case of instructions other than a brief it is a matter for agreement between the instructing member or officer 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 member or officer 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 or officer 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 or officer 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 6A**  
**(paragraphs 5.17(b) & 18(c)(ii))**

**DIRECT ACCESS RULES FOR DIRECT ACCESS BY ARBITRATORS**

1. Unless otherwise stated, words and expressions used in these rules shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes of the Code.
2. Subject to these rules, a practising barrister may accept Direct Access work from a member of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators or such other body of Arbitrators as may be specified in Annex 4.
3. A practising barrister shall only be entitled to accept instructions in Direct Access work under these rules from a member of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators or such other body of Arbitrators as may be specified in Annex 4 who should be his first point of contact.
4. A practising barrister shall not accept any brief or instructions in Direct Access work under these rules 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 Access work and stating the period for which he is so insured has been supplied to the Bar Council.
5. A practising barrister must not accept any brief or instructions in Direct Access work under these rules:-
  - (a) to receive, disburse or otherwise handle clients’ money, securities or other assets other than by receiving payment of his fees;
  - (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; or
  - (d) to appear in the Court of Final Appeal, the High Court, the District Court or a Magistrate’s Court.

6. A practising barrister, having accepted a brief or instructions in Direct Access work under these rules, shall decline to act further at any stage when he considers it in the interests of the lay client that a solicitor be instructed.
7. A practising barrister who accepts Direct Access work under these rules 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 all 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 Access matters.
8. Nothing in these rules shall affect any other rules in the Code entitling a practising barrister to accept instructions from any person other than a solicitor.
9. Save as is in these rules otherwise provided, the Code shall apply to instructions received and accepted under these rules.

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

**Preamble**

- (i) These Standard Terms of Engagement have been approved by the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a member of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators or such other body of Arbitrators as may be specified in Annex 4 in accordance with the Direct Access Rules in this Annex.
- (iii) Any member of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators or such other body of Arbitrators as may be specified in Annex 4 will be deemed to instruct a practising 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, “Instructing Member” means a member of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators or such other body of Arbitrators as may be specified in Annex 4 from whom a practising barrister has accepted instructions for Direct Access work in accordance with the Direct Access Rules

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes of the Code.

**Instructions**

- 1. A practising barrister has the right in circumstances set out in the Direct Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.
- 2. (i) A practising barrister may only accept instructions from a member of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators or such other body of Arbitrators as may be specified in Annex 4 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 Code.
- 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 Direct Access in accordance with the Direct Access Rules.
- 6. Without prejudice to any other right which a practising barrister may have in accordance with the Code 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.
- 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) The 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 the barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another practising 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's fees.
- 9.
  - (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.
- 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 Member 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 6B**  
**(paragraphs 5.17(b) & 5.18(c)(ii))**

**DIRECT ACCESS RULES FOR DIRECT ACCESS**  
**BY MEMBERS OF THE TAXATION INSTITUTE OF HONG KONG**

1. Unless otherwise stated, words and expressions used in these rules shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force.
2. Subject to these rules, a practising barrister may accept Direct Access work from a member of the Taxation Institute of Hong Kong.
3. A practising barrister shall only be entitled to accept instructions in Direct Access work under these rules from a member of the Taxation Institute of Hong Kong who should be his first point of contact.
4. A practising barrister shall not accept any brief or instructions in Direct Access work under these rules 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 Access work and stating the period for which he is so insured has been supplied to the Bar Council.
5. A practising barrister must not accept any brief or instructions in Direct Access work under these rules:-
  - (a) to receive, disburse or otherwise handle clients’ money, securities or other assets other than by receiving payment of his fees;
  - (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; or
  - (d) to appear in the Court of Final Appeal, the High Court, the District Court or a Magistrate’s Court.

6. A practising barrister, having accepted a brief or instructions in Direct Access work under these rules, shall decline to act further at any stage when he considers it in the interests of the lay client that a solicitor be instructed.
7. A practising barrister who accepts Direct Access work under these rules 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 all 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 Access matters.
8. Nothing in these rules shall affect any other rules in the Code entitling a practising barrister to accept instructions from any person other than a solicitor.
9. Save as is in these rules otherwise provided, the Code shall apply to instructions received and accepted under these rules.

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT OF  
A PRACTISING BARRISTER UNDERTAKING DIRECT ACCESS WORK FOR  
MEMBERS OF THE TAXATION INSTITUTE OF HONG KONG**

**Preamble**

- (i) These Standard Terms of Engagement have been approved by the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a member of the Taxation Institute of Hong Kong in accordance with the Direct Access Rules in this Annex.
- (iii) Any member of the Taxation Institute of Hong Kong will be deemed to instruct a practising 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, “Instructing Member” means a member of the Taxation Institute of Hong Kong from whom a practising barrister has accepted instructions for Direct Access work in accordance with the Direct Access Rules.

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force.

**Instructions**

- 1. A practising barrister has the right in circumstances set out in the Direct Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.
- 2.
  - (i) A practising barrister may only accept instructions from a member of the Taxation Institute of Hong Kong 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 Code.
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 Direct Access in accordance with the Direct Access Rules.
6. Without prejudice to any other right which a practising barrister may have in accordance with the Code 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.
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) The 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 the barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another practising 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's fees.
9.
  - (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.
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 Member 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 the 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 6C**  
**(paragraph 5.18(c)(ii))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT  
OF A PRACTISING BARRISTER UNDERTAKING DIRECT ACCESS WORK  
FOR MEMBERS OF THE HONG KONG INSTITUTE OF SURVEYORS**

**Preamble**

- (i) These standard terms have been agreed and approved by the Hong Kong Institute of Surveyors (“H.K.I.S.”) and the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a Qualified Instructing Member of the H.K.I.S. in accordance with the Direct Access Rules in Annex 5.
- (iii) Qualified Instructing Members of the H.K.I.S. are recommended to use these Standard Terms, varied where appropriate, when agreeing terms on which the member is instructing a practising barrister.

**Definitions**

In these Standard Terms:

- (i) “Qualified Instructing Member” means an associate or fellow member of the H.K.I.S.; and
- (ii) “Instructing Member” means a Qualified Instructing Member from whom a practising barrister has accepted instructions for Direct Access work in accordance with the Direct Access Rules.

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes of the Code.

**Instructions**

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

2. (i) A practising barrister may only accept instructions from a Qualified Instructing Member 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 Qualified Instructing Member wishing to instruct a practising barrister to identify himself as the instructing member 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 the matter giving rise to such instructions.
3. A practising barrister may only accept instructions from a Qualified Instructing Member in a matter of a kind which falls generally within the professional expertise of members of the H.K.I.S.
4. (i) An Instructing Member may instruct a barrister in his capacity as a director, partner, member or employee of a company, firm or other body.
- (ii) In any case where a barrister accepts instructions from an Instructing Member in his capacity as a director, partner, member or employee of a company, firm or other body, the obligations of the Instructing Member under these Standard Terms shall be joint and several obligations of him and that company firm or other body, unless otherwise agreed between the barrister and his Instructing Member.
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 there is any urgency the Instructing Member must, when he delivers his instructions, inform the barrister or his clerk or secretary of the precise deadline(s) involved in order that the barrister or his clerk or secretary may decide whether in those circumstances he can accept the instructions. The information must be communicated to the barrister or his clerk or secretary separately from the instructions themselves. The barrister or his clerk or secretary must inform the Instructing Member without delay whether he can or cannot accept instructions.
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 Direct Access in accordance with

the Direct Access Rules.

7. Without prejudice to any other right which a practising barrister may have in accordance with the Code 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 his request.
8.
  - (i) Unless otherwise agreed a barrister accepts a brief upon the understanding that he may unavoidably be prevented by a conflicting professional engagement from attending the case.
  - (ii) The barrister shall inform the Instructing Member immediately there is an appreciable risk that he may not be able to undertake a brief which he was accepted.
  - (iii) In the event that the barrister has to return a brief, he shall so far as practicable, do so in sufficient time to enable another practising 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 fee 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 a 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 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 Member should require the return of such instructions and papers, to take and retain a copy of such instructions and 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 advice.
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 6D**  
**(paragraph 5.18(c)(ii))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT  
OF A PRACTISING BARRISTER UNDERTAKING DIRECT ACCESS WORK  
FOR THE OFFICE OF THE OMBUDSMAN**

**Preamble**

- (i) These Standard Terms of Engagement have been agreed and approved by the Office of the Ombudsman ("O.T.O.") and the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a Qualified Instructing Officer of the Office of the Ombudsman in accordance with the Direct Access Rules in Annex 5.
- (iii) Any Qualified Instructing Officer of the Office of the Ombudsman will be deemed to instruct a practising barrister on these Standard Terms unless and to the extent that they are excluded or varied by agreement between that officer and the barrister whom he instructs in any particular matter.

**Definitions**

In these Standard Terms:-

- (i) "Instructing Officer" means a Qualified Instructing Officer of O.T.O from whom a practising barrister has accepted instructions for Direct Access work in accordance with the Direct Access Rules; and
- (ii) " Qualified Instructing Officer of O.T.O" means any of the following staff of O.T.O.:-
  - (a) all Directorate Officers, i.e. Deputy Ombudsman and Assistant Ombudsman;
  - (b) all Complaint Officers comprising Chief Complaints Officers, Senior Complaints Officers and Complaints Officers;
  - (c) Chief Executive Officer, Senior External Relations Officer, Senior Office Administrator and Accountant of O.T.O.

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes of the Code.

## **Instructions**

1. A practising barrister has the right in circumstances set out in the Direct Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.
2.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Officer of O.T.O. who is identified at the time of giving instructions and (subject to sub-paragraph (iii) below) confirms that he and/or the O.T.O. 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 Qualified Instructing Officer of O.T.O. wishing to instruct a practising barrister to identify himself as the Instructing Officer at the time of giving instructions and (subject to sub-paragraph (iii) below) confirms that he and/or the O.T.O. is insured against claims for professional negligence in respect of the matter giving rise to such instructions.
  - (iii) A practising barrister may accept instructions from a Qualified Instructing Officer of O.T.O. without the confirmation referred to in sub-paragraph (i) above and such officer is not under the duty to give the confirmation referred to in sub-paragraph (ii) above so long as section 18A of the Ombudsman Ordinance (Cap. 397) remains in force in the following form – “No person acting in good faith shall be personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power under this Ordinance.”
3.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Officer of O.T.O. in a matter of a kind which falls generally within the duties, responsibilities, professional expertise and/or practice of that officer.
  - (ii) An Instructing Officer warrants that the matter in which he is instructing the barrister is of a kind which falls substantially within his field of duties, responsibilities, professional expertise and/or practice.
4.
  - (i) An Instructing Officer should, in addition to instructing a barrister in his personal



capacity, instruct the barrister in his capacity as an officer of the O.T.O.

- (ii) The Instructing Officer warrants that he is authorised by the O.T.O. to instruct the barrister under these standard terms (subject to any exclusion and/or variation as agreed between the barrister and the Instructing Officer (who also warrants that he is authorised by the O.T.O to agree to any such exclusion and/or variation)), and the obligations of the Instructing Officer under these standard terms (subject to any exclusion and/or variation, as the case may be) shall be the joint and several obligations of him and O.T.O.
- 5.
- (i) Unless the Instructing Officer 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 Officer 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 Direct Access in accordance with the Direct Access Rules.
7. Without prejudice to any other right which a practising barrister may have in accordance with the Code 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 Officer 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) The barrister shall inform the Instructing Officer 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 the barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another practising barrister to be engaged and to master the brief.

### **The Barrister's Fees**

- 9. It is the obligation of the Instructing Officer, jointly with O.T.O., 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 Officer.
- 13. In the case of instructions other than a brief it is a matter for agreement between the Instructing Officer 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 Officer 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 Officer 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 Officer 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.

16. The invalidity or unenforceability of any provision or part(s) of any provision will not affect the validity or enforceability of any other provisions herein and any invalid or unenforceable provision or part(s) thereof will be severable.

**ANNEX 6E**  
**(paragraph 5.18(c)(ii))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT  
OF A PRACTISING BARRISTER UNDERTAKING DIRECT ACCESS WORK  
FOR THE LEGAL AID SERVICES COUNCIL**

**Preamble**

- (i) These Standard Terms of Engagement have been agreed and approved by the Legal Aid Services Council ("LASC") and the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by the LASC in accordance with the Direct Access Rules in Annex 5.
- (iii) The LASC will be deemed to instruct a practising barrister on these Standard Terms unless and to the extent that they are excluded or varied by agreement between the LASC and the barrister whom it instructs in any particular matter.

**Definitions**

Unless otherwise stated, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar ("Code") for the time being in force and references to numbered annexes are to the annexes of the Code.

**Instructions**

- 1. A practising barrister has the right in circumstances set out in the Direct Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.
- 2.
  - (i) A practising barrister may only accept instructions from LASC in a matter of a kind which falls generally within the functions of LASC.
  - (ii) When giving instruction, LASC warrants that the matter in which it is instructing the barrister is of a kind which falls substantially within the functions of LASC.

3. (i) Unless LASC 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 LASC must, when it delivers its 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.
4. 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 Direct Access in accordance with the Direct Access Rules.
5. Without prejudice to any other right which a practising 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 LASC shall have the option of withdrawing his instructions to the barrister or of complying with the barrister's request.
6. (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 LASC 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 practising barrister to be engaged and to master the brief.

### **The Barrister's Fees**

7. It is the obligation of LASC to be responsible for the payment of the barrister's fees.

8. (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.
9. (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.
10. A brief will only be accepted by a barrister after a fee has been agreed with LASC.
11. In the case of instructions other than a brief it is a matter for agreement between LASC 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**

12. A barrister shall be entitled for the purposes of his records to retain his instructions or any papers delivered therewith or, if LASC 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 LASC to supply him with and to permit him to retain for those purposes a copy of such instructions, papers or advices.
13. In any case where a barrister gives advice orally it shall be the duty of LASC 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.
14. The invalidity or unenforceability of any provision or part(s) of any provision will not affect the validity or enforceability of any other provisions herein and any invalid or unenforceable provision or part(s) thereof will be severable.

**ANNEX 6F**  
**(paragraph 5.18(c)(ii))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT  
OF A PRACTISING BARRISTER UNDERTAKING DIRECT ACCESS WORK  
FOR THE OFFICE OF THE PRIVACY COMMISSIONER FOR PERSONAL DATA**

**Preamble**

- (i) These Standard Terms of Engagement have been agreed and approved by the Office of the Privacy Commissioner for Personal Data (“PCPD”) and the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a Qualified Instructing Officer of the Office of the PCPD in accordance with the Direct Access Rules in Annex 5.
- (iii) Any Qualified Instructing Officer of the Office of the PCPD will be deemed to instruct a practising barrister on these Standard Terms unless and to the extent that they are excluded or varied by agreement between that officer and the barrister whom he instructs in any particular matter.

**Definitions**

In these Standard Terms:-

- (i) “Instructing Officer” means a Qualified Instructing Officer of the Office of the PCPD from whom a practising barrister has accepted instructions for Direct Access work in accordance with the Direct Access Rules;
- (ii) “Office of the PCPD” shall mean the office by the name of the Privacy Commissioner for Personal Data established under section 5 of the Personal Data (Privacy) Ordinance (Cap. 486); and
- (iii) "Qualified Instructing Officer of the Office of the PCPD" means any of the following staff of the Office of the PCPD:-
  - (a) Privacy Commissioner for Personal Data;
  - (b) Deputy Privacy Commissioner for Personal Data;
  - (c) Chief Legal Counsel;
  - (d) Senior Legal Counsel;
  - (e) Legal Counsel;

- (f) Chief Personal Data Officer.

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes of the Code.

### **Instructions**

1. A practising barrister has the right in circumstances set out in the Direct Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.
2.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Officer of the Office of the PCPD who is identified at the time of giving instructions and confirms that he and/or the Office of the PCPD 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 Qualified Instructing Officer of the Office of the PCPD wishing to instruct a practising barrister to identify himself as the instructing officer at the time of giving instructions and confirms that he and/or the Office of the PCPD is insured against claims for professional negligence in respect of the matter giving rise to such instructions.
3.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Officer of the Office of the PCPD in a matter of a kind which falls generally within the duties, responsibilities, professional expertise and/or practice of that officer of the Office of the PCPD.
  - (ii) An instructing officer warrants that the matter in which he is instructing the barrister is of a kind which falls substantially within his field of duties, responsibilities, professional expertise and/or practice.
4.
  - (i) An Instructing Officer should, in addition to instructing the barrister in his personal capacity, instruct the barrister in his capacity as an officer of the Office of the PCPD.
  - (ii) The Instructing Officer warrants that he is authorized by the Office of the PCPD to instruct the barrister under these Standard Terms (subject to any exclusion and/or variation as agreed between the barrister and the Instructing Officer (who also warrants that he is authorized by the Office of the PCPD to agree to any such exclusion and/or variation)), and the obligations of the Instructing Officer under



these Standard Terms (subject to any exclusion and/or variation, as the case may be) shall be the joint and several obligations of him and the Office of the PCPD.

5. (i) Unless the Instructing Officer 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 Officer 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 Direct Access in accordance with the Direct Access Rules.
7. Without prejudice to any other right which a practising barrister may have in accordance with the Code 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 Officer 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) The barrister shall inform the instructing officer 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 the barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another practising barrister to be engaged and to master the brief.

## **The Barrister's Fees**

9. It is the obligation of the Instructing Officer, jointly with the Office of the PCPD, 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 Officer.
13. In the case of instructions other than a brief it is a matter for agreement between the Instructing Officer 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 Officer 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 Officer 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 Officer 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.
16. The invalidity or unenforceability of any provision or part(s) of any provision will not affect the validity or enforceability of any other provisions herein and any invalid or unenforceable provision or part(s) thereof will be severable.

**ANNEX 6G**  
**(paragraph 5.18(c)(ii))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT  
OF A PRACTISING BARRISTER UNDERTAKING DIRECT ACCESS WORK  
FOR THE ESTATE AGENTS AUTHORITY**

**Preamble**

- (i) These Standard Terms of Engagement have been agreed and approved by the Estate Agents Authority (“the Authority”) and the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a Qualified Instructing Officer of the Authority in accordance with the Direct Access Rules in Annex 5.
- (iii) Any Qualified Instructing Officer of the Authority will be deemed to instruct a practising barrister on these Standard Terms unless and to the extent that they are excluded or varied by agreement between that officer and the barrister whom he instructs in any particular matter.

**Definitions**

In these Standard Terms:-

- (i) “Instructing Officer” means a Qualified Instructing Officer of the Authority from whom a practising barrister has accepted instructions for Direct Access work in accordance with the Direct Access Rules;
- (ii) “the Authority” shall mean the Estate Agents Authority established under section 4 of the Estate Agents Ordinance (Cap. 511); and
- (iii) "Qualified Instructing Officer" means any of the following staff of the Authority:-
  - (a) The Chief Executive Officer;
  - (b) Director of Services;
  - (c) Director of Operations;
  - (d) Director of Regulatory Affairs and General Counsel;
  - (e) Legal Counsel;
  - (f) Senior Manager (Operations);
  - (g) Manager (Complaints);

- (h) Manager (Enforcement);
- (i) Manager (Legal Services & Examination);
- (j) Manager (Disciplinary Proceedings);
- (k) Manager (Licensing);
- (l) Manager (Corporate Communications);
- (m) Manager (Human Resources & Administration);
- (n) Manager (Professional Development);
- (o) Manager (Finance & Information Technology)

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes of the Code.

### **Instructions**

1. A practising barrister has the right in circumstances set out in the Direct Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.
2.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Officer of the Authority who is identified at the time of giving instructions and confirms that he and/or the Authority 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 Qualified Instructing Officer of the Authority wishing to instruct a practising barrister to identify himself as the instructing officer at the time of giving instructions and confirms that he and/or the Authority is insured against claims for professional negligence in respect of the matter giving rise to such instructions.
  - (iii) A practising barrister may accept instructions from a Qualified Instructing Officer of the Authority without the confirmation referred to in sub-paragraph (i) above and a Qualified Instructing Officer of the Authority is not under the duty to give the confirmation referred to in sub-paragraph (ii) above so long as section 54(1) of the Estate Agents Ordinance (Cap. 511) remains in force in the following form – “No personal liability shall be incurred by any person in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under this Ordinance (including a function duly delegated under this Ordinance)”.

3.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Officer of the Authority in a matter of a kind which falls generally within the functions of the Authority.
  - (ii) When giving instructions, the Qualified Instructing Officer of the Authority (on his own behalf and on behalf of the Authority) warrants that the matter in which he is instructing the barrister is of a kind which falls substantially within the functions of the Authority.
4.
  - (i) An Instructing Officer should, in addition to instructing a barrister in his personal capacity, instruct the barrister in his capacity as an officer of the Authority.
  - (ii) The Instructing Officer warrants that he is authorized by the Authority to give the warranty referred to in paragraph 3(ii) above and to instruct the barrister under these Standard Terms (subject to any exclusion and/or variation as agreed between the Instructing Officer (who also warrants that he is authorized by the Authority to agree to any such exclusion and/or variation)), and the obligations of the Instructing Officer under these Standard Terms (subject to any exclusion and/or variation, as the case may be) shall be the joint and several obligations of him and the Authority.
5.
  - (i) Unless the Instructing Officer 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 Officer 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 Direct Access in accordance with the Direct Access Rules.
7. Without prejudice to any other right which a practising barrister may have in accordance with the Code to return his instructions, a barrister shall be entitled at his complete discretion, 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 Officer 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) The barrister shall inform the Instructing Officer 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 the barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another practising barrister to be engaged and to master the brief.

### **The Barrister's Fees**

9. It is the obligation of the Instructing Officer, jointly with the Authority, 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 officer.
13. In the case of instructions other than a brief it is a matter for agreement between the Instructing Officer 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 Officer 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 Officer 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 Officer 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.
16. The invalidly or unenforceability of any provision or part(s) of any provision will not affect the validity or enforceability of any other provisions herein and any invalid or unenforceable provision or part(s) thereof will be severable.

**ANNEX 6H**  
**(paragraph 5.18(c)(ii))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT  
OF A PRACTISING BARRISTER UNDERTAKING  
DIRECT ACCESS WORK FOR THE EQUAL OPPORTUNITIES COMMISSION**

**Preamble**

- (i) These Standard Terms of Engagement have been agreed and approved by the Equal Opportunities Commission (the “Commission”) and the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a Qualified Instructing Officer of the Commission in accordance with the Direct Access Rules in Annex 5.
- (iii) Any Qualified Instructing Officer of the Commission will be deemed to instruct a practising barrister on these Standard Terms unless and to the extent that they are excluded or varied by agreement between that officer and the barrister whom he instructs in any particular matter.
- (iv) The Commission confirms that it has procured and agrees that it will maintain adequate insurance cover against the risks of professional liability arising from or incidental to the legal services or work undertaken by its Instructing Officer.

**Definitions**

In these Standard Terms:-

- (i) “Instructing Officer” means a Qualified Instructing Officer of the Commission from whom a practising barrister has accepted instructions in accordance with the Direct Access Rules;
- (ii) “Commission” shall mean the office by the name of the Equal Opportunities Commission established under section 63 of the Sex Discrimination Ordinance (Cap. 480); and
- (iii) "Qualified Instructing Officer of the Commission" means any of the following staff of the Commission acting personally and as a representative of the Commission:-
  - (a) Chairman;
  - (b) Director of Operations;
  - (c) Chief Legal Counsel;
  - (d) Legal Counsel;



- (e) Assistant Legal Counsel.

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes of the Code.

### **Instructions**

1. A practising barrister has the right in circumstances set out in the Direct Access Rules to refuse to accept instructions and these Standard Terms will apply only where a barrister has accepted instructions.
2.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Officer of the Commission who is identified at the time of giving instructions and confirms that he and the Commission are 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 Qualified Instructing Officer of the Commission wishing to instruct a practising barrister to identify himself as the instructing officer at the time of giving instructions and confirms that he and the Commission are insured against claims for professional negligence in respect of the matter giving rise to such instructions.
3.
  - (i) A practising barrister may only accept instructions from an Officer of the Commission in a matter of a kind which falls generally within the duties, responsibilities, professional expertise and/or practice of that officer of the Commission.
  - (ii) An Instructing Officer warrants that the matter in which he is instructing the barrister is of a kind which falls substantially within his field of duties, responsibilities, professional expertise and/or practice.
4.
  - (i) An Instructing Officer should, in addition to instructing a barrister in his personal capacity, instruct the barrister in his capacity as an officer of the Commission.
  - (ii) The Instructing Officer warrants that he is authorized by the Commission to instruct the barrister under these Standard Terms (subject to any exclusion and/or variation as agreed between the barrister and the Instructing Officer (who also warrants that he is authorized by the Commission to agree to any such exclusion and/or variation)), and the obligations of the Instructing Officer under these Standard Terms (subject to any

exclusion and/or variation, as the case may be) shall be the joint and several obligations of him and the Commission.

5. (i) Unless the Instructing Officer 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 Officer 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 Direct Access in accordance with the Direct Access Rules.
7. Without prejudice to any other right which a practising 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 Officer 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) The barrister shall inform the instructing officer 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 the barrister has to return a brief, he shall so far as practicable do so in sufficient time to enable another practising barrister to be engaged and to master the brief.

## **The Barrister's Fees**

9. It is the obligation of the Instructing Officer, jointly with the Commission, 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 Officer.
13. In the case of instructions other than a brief it is a matter for agreement between the Instructing Officer 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 Officer 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 Officer 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 Officer 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.
16. The invalidity or unenforceability of any provision or part(s) of any provision will not affect the validity or enforceability of any other provisions herein and any invalid or unenforceable provision or part(s) thereof will be severable.

**ANNEX 6I**  
**(paragraph 5.18(c)(ii))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT  
OF A PRACTISING BARRISTER UNDERTAKING DIRECT ACCESS WORK  
FOR MEMBERS OF THE HONG KONG INSTITUTION OF ENGINEERS**

**Preamble**

- (i) These standard terms have been agreed and approved by the Hong Kong Institution of Engineers (“HKIE”) and the Bar Council.
- (ii) They are intended to apply in any case where a practising barrister is instructed by a Qualified Instructing Member of the HKIE in accordance with the Direct Access Rules in Annex 5.
- (iii) Qualified Instructing Members of the HKIE are recommended to use these Standard Terms, varied where appropriate, when agreeing terms on which the member is instructing a practising barrister.

**Definitions**

In these Standard Terms:

- (i) “Qualified Instructing Member” means Corporate Member (a Fellow or Member) of the HKIE; and
- (ii) “Instructing Member” means a Qualified Instructing Member from whom a practising barrister has accepted instructions for Direct Access work in accordance with the Direct Access Rules.

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Code of Conduct of the Bar (“Code”) for the time being in force and references to numbered annexes are to the annexes thereto.

**Instructions**

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

2.
  - (i) A practising barrister may only accept instructions from a Qualified Instructing Member 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 Qualified Instructing Member wishing to instruct a practising barrister to identify himself as the instructing member 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 the matter giving rise to such instructions.
3. A practising barrister may only accept instructions from a Qualified Instructing Member in a matter of a kind which falls generally within the professional expertise of members of the HKIE.
4.
  - (i) An Instructing Member may instruct a practising barrister in his capacity as a director, partner, member or employee of a company, firm or other body.
  - (ii) In any case where a barrister accepts instructions from an Instructing Member in his capacity as a director, partner, member or employee of a company, firm or other body, the obligations of the Instructing Member under these Standard Terms shall be joint and several obligations of him and that company firm or other body, unless otherwise agreed between the barrister and the Instructing Member.
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 there is any urgency the Instructing Member must, when he delivers his instructions, inform the barrister or his clerk or secretary of the precise deadline(s) involved in order that the barrister or his clerk or secretary may decide whether in those circumstances he can accept the instructions. The information must be communicated to the barrister or his clerk or secretary separately from the instructions themselves. The barrister or his clerk or secretary must inform the Instructing Member without delay whether he can or cannot accept instructions.
6. Notwithstanding that instructions have been delivered to a practising 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 Direct Access in accordance with the Direct Access Rules.

7. Without prejudice to any other right which a practising barrister may have in accordance with the Code 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 his request.
8.
  - (i) Unless otherwise agreed a barrister accepts a brief upon the understanding that he may unavoidably be prevented by a conflicting professional engagement from attending the case.
  - (ii) The barrister shall inform the Instructing Member immediately there is an appreciable risk that he may not be able to undertake a brief which he was accepted.
  - (iii) In the event that the barrister has to return a brief, he shall so far as practicable, do so in sufficient time to enable another practising 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 fee 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 a 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 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 Member should require the return of such instructions and papers, to take and retain a copy of such instructions and 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 advice.
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 6J**  
**(paragraph 5.18(c)(ii))**

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT OF A PRACTISING  
BARRISTER UNDERTAKING DIRECT PROFESSIONAL ACCESS WORK FOR  
MEMBERS OF THE FINANCIAL DISPUTE RESOLUTION CENTRE**

**Preamble**

- (i) These Standard Terms of Engagement have been approved by the Financial Dispute Resolution Centre (“**FDRC**”) and the Bar Council. The Bar Council has further recognised the FDRC 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 practising barrister is instructed by a Qualified Instructing Member of the FDRC in accordance with the Direct Professional Access Rules in Annex 5 of the Bar Code of Conduct.
- (iii) Qualified Instructing Members of the FDRC are recommended to use these Standard Terms, varied where appropriate, when agreeing to terms on which the member is instructing a practising barrister.

**Definitions**

In these Standard Terms:-

“**FDRC**” means the Financial Dispute Resolution Centre, being a professional body recognised by the Bar Council under and for the purposes of the Direct Professional Access Rules;

“**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 5 of the Bar Code of Conduct;

- (i) “**Qualified Instructing Member**” means the Secretary to the FDRC Disciplinary Committee, the (Assistant) Dispute Resolution Manager of the FDRC or the Complaint Officer for the disciplinary procedures on behalf of the FDRC; and
- (ii) “**Instructing Member**” means a Qualified Instructing Member from whom a practising barrister has accepted instructions for Direct Professional Access Work in accordance with the Direct Professional Access Rules;



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

Save as aforesaid, words and expressions used in these Standard Terms shall bear the same meanings as they are defined in the Bar Code of Conduct for the time being in force and references to numbered annexes are to the annexes thereto.

### **Instructions**

1. A practising 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 practising barrister may only accept instructions from a Qualified Instructing Member 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 Qualified Instructing Member wishing to instruct a practising 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 practising barrister may only accept instructions from a Qualified Instructing Member in a matter of a kind which falls generally within the professional expertise of members of the FDRC.  
  
(ii) An Instructing Member warrants that the matter in which he is instructing the practising barrister is of a kind which falls substantially within the field in which he normally practises.
4. (i) An Instructing Member may instruct a practising 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.  
  
(iii) In any case where a practising barrister accepts instructions from an Instructing Member in his capacity as a director, partner, member or employee of a company, firm or other body, the obligations of the Instructing Member under these Standard Terms shall be joint and several obligations of him and that company firm or other body, unless otherwise agreed between the barrister and the Instructing Member.

5. (i) Unless the Instructing Member otherwise stipulates and the practising barrister agrees, the practising 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 practising barrister or his clerk or secretary and of the particular reason for urgency in order that the practising barrister or his clerk or secretary may decide whether in those circumstances he can accept the instructions. That information must be communicated to the practising barrister or his clerk or secretary separately from the instructions themselves.
6. Notwithstanding that instructions have been delivered to a practising barrister, the practising 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 Direct Professional Access in accordance with the Direct Professional Access Rules.
7. Without prejudice to any other right which a practising barrister may have in accordance with the Bar Code of Conduct to return his instructions, a practising 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) The practising 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 the practising 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 Member 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.
16. The invalidity or unenforceability of any provision or part(s) of any provision will not affect the validity or enforceability of any other provisions herein and any invalid or unenforceable provision or part(s) thereof will be severable.

**ANNEX 7**  
**(paragraphs 6.2(e) and 6.3)**

**CONFLICT OF INTEREST – CONNECTION WITH CLIENT**

The following are examples of the application of paragraphs 6.2(e) and 6.3:-

**(1) Membership of or connection with various bodies**

*Member of the Executive or Legislative Council*

*Companies*

- (a) A practising barrister who is a shareholder or director or the secretary of any company should not accept a brief for the company or, in a professional capacity, advise or settle documents for the company.
- (b) A practising barrister who has been but has ceased to be a shareholder or director or the secretary of any company should not act professionally, whether for the company or any other person, in any matter connected with or arising out of affairs relating to that company which were current while he was a shareholder or director or the secretary.
- (c) A practising barrister who has professionally advised a client about his position as a director or shareholder of a company ought not thereafter to accept a directorship of that company with a view either to assisting in the investigation of the company's affairs or advising the company on matters of law affecting its shareholders; or to accept a directorship as the nominee of the client on his retirement, in order to watch his interest.
- (d) On the other hand, a practising barrister may, but is not obliged to, accept a brief to appear at a meeting of the shareholders of a company in order either to support the policy of the Board or to present the views of a group of shareholders, and may take a transfer of a share or shares of the company to enable him so to appear, provided he explains to the meeting that he appears as a paid advocate and is not necessarily presenting his own views as a shareholder.
- (e) There is equally no objection to a practising barrister, in his private capacity and not professionally, serving on a shareholder's committee of inspection or otherwise assisting or acting with the liquidator in the winding-up of a company of which he is a member.

*Professional Organisations*

(f) A practising barrister who is an honorary member of a professional organisation or an ordinary member of a learned society or association concerned with the study of legal or medico-legal problems, ought not to act professionally for or against the organisation, society or association without the consent of the Bar Council. If he is a member of the Executive Committee or governing body of such a society or association he should not act professionally for or against it in any circumstances.

(2) **Deputations**

A practising barrister who accepts a brief to speak for a deputation ought to make it clear at the outset of the proceedings that he is appearing as Counsel and not as a member of the deputation, and he ought to abide by the decision of the authority receiving the deputation as to whether he can be heard as Counsel or not.

(3) **Taxation**

Counsel should not, without the express consent of the lay client, appear for the solicitor on the taxation between the solicitor and the client of the costs of a litigation in which the Counsel was retained and acted for the client.

**ANNEX 8**  
**(paragraph 6.2(f))**

**CONFLICT OF INTEREST – CONNECTION WITH COURT OR TRIBUNAL**

The following are examples of the application of paragraph 6.2(f):-

**Former Judges**

- (1) The Bar Council does not approve as a matter of principle of former Judges in the Court of Final Appeal, High Court or the District Court returning to practice at the Bar in any capacity.

**Appearance before Relatives**

- (2) It is not considered improper for a barrister to appear before his parents or near relative in the Court of First Instance, Court of Appeal, or the Court of Final Appeal. But a barrister should not appear before his or her spouse except in the Court of Final Appeal.

**ANNEX 9A**  
**(paragraph 9.12(a))**

**REPRODUCTION OF CIRCULAR NO. 6/81**  
**ISSUED BY THE LAW SOCIETY OF HONG KONG**  
**RE “PAYMENT OF COUNSEL’S FEES” AND**  
**“MARKING OF COUNSEL’S DIARY”**

**Payment of Counsel’s Fees**

Counsel’s fees must be paid or challenged promptly, and in any event within 2 months from the submission of Counsel’s fee note. Failure to pay Counsel’s fees within the time limit will, on complaint, be dealt with and investigated as an allegation of breach of conduct.

The Council has received complaints about late payment of Counsel’s fees which some members place in a deposit account to earn interest. The Council cannot too strongly deplore such conduct which calls for disciplinary sanction.

**Marking of Counsel’s Diary**

- (a) The marking of Counsel’s diary does not commit either Counsel or solicitor, and no fees are therefore payable on account of it.
- (b) Counsel and solicitors should be encouraged to come to an express agreement relating to both the brief and refreshers and the manner in which such are payable.
- (c) Counsel and solicitors should be encouraged to come to such a specific agreement even before Counsel’s diary is obtained; but if this should prove to be impossible, then the sooner they come a specific agreement, the better it is for both.
- (d) If after the marking of Counsel’s diary, Counsel is approached by another solicitor wishing to brief him during the same period in question or part thereof, Counsel (who by that time has agreed his brief as well as refreshers) would be obliged to approach the 1st solicitor and he should specify terms as to the manner in which the agreed brief fee and refreshers should become payable. If the 1st solicitor or his client is not in agreement with such terms, the Counsel will be at liberty to accept the brief from the 2nd solicitor. In such event, the 1st solicitor need not

pay Counsel anything in relation to the reserved dates. Provided that the above rule does not apply where:

- (i) Counsel and solicitors have come to an express agreement relating to both the brief and refreshers and the manner in which they are payable; or
  - (ii) A brief is delivered before the commencement of trial, because in such event, the brief fee is payable in any event, but the payment of unused refreshers will still be governed by the above rule.
- (e) Briefs are as a rule delivered and accepted on the understanding that Counsel may be justifiably prevented from attending at Court.
- (f) Moreover, Counsel is entitled to return a brief if he has a commitment in the Court of Appeal, although dates therefor were fixed subsequent to the acceptance of the brief to be returned, in respect of a matter in which he appeared in the Court below or in cases of a complex nature where he was involved from the inception of the appeal.



**ANNEX 9B**  
**(paragraph 9.12(a))**

**REPRODUCTION OF CIRCULAR NO. 27/97**  
**ISSUED BY THE LAW SOCIETY OF HONG KONG**  
**RE “SOLICITORS PERSONALLY RESPONSIBLE FOR BARRISTERS’ FEES”**  
**(REVISION OF PRINCIPLE)**

**Solicitors liability for barristers’ fees: Revision to Principle 12.04 of the Guide.**

1. The Council has resolved that non-payment of the proper fees of a barrister shall not constitute professional misconduct where there is reasonable excuse for such non-payment.
2. The following shall apply to all arrangement for barristers’ fees save where there is a pre-existing agreement or arrangement subsisting at the date of this circular.  
(20th January 1997)

**The Revised Principle: 12.04 of the Guide**

3. Paragraph 12.04 of the Guide has been revised as follows:

“In the absence of reasonable excuse a solicitor is personally liable as a matter of professional conduct for the payment of a barrister’s proper fees. Failure to obtain funds on account of a barrister’s fees shall not of itself constitute reasonable excuse.”

*(Commentaries are unchanged.)*

**ANNEX 9C**  
**(paragraph 9.12(d))**

**TERMS OF REFERENCE AND PROCEDURE**  
**OF THE JOINT TRIBUNAL**

1. The Joint Tribunal (formerly known as the Grey Areas Committee) shall be a Joint Tribunal of the Bar Council and the Law Society.
2. The membership of the Joint Tribunal shall comprise a panel of 10 barristers appointed by the Chairman (“the Chairman”) of the Bar Association and 10 solicitors appointed by the President (“the President”) of the Law Society.
3. The Joint Tribunal shall resolve disputes between members of the Bar Association and the Law Society relating to fees which are referred to it by the Chairman or the President.
4. Where the Chairman or the President is of the opinion that such a dispute should be referred to the Joint Tribunal, the Chairman or the President shall each inform the other and the parties (“the parties”).
5. Within one month of such notice the Chairman and the President respectively shall nominate a barrister and a solicitor from the Panel to form a Joint Tribunal to resolve the dispute and shall advise the parties of the same.
6. The party whose complaint forms the basis for the reference (“the Applicant”) shall within 14 days of the Joint Tribunal’s appointment serves copies of the Statement of his case, all relevant fee notes, correspondence between the parties, the Bar Council and/or the Law Society, and other documents in relation to the dispute to the other party (“the Respondent”), and a copy to each Joint Tribunal member.
7. The Respondent shall prepare and supply copies of his Statement of Response within 14 days of receipt of the Applicant’s case, to the Applicant and Joint Tribunal.
8. The Applicant shall within 14 days make a Statement of Reply, if appropriate, with any further supporting documents and supply copies of the same to the Respondent and Joint Tribunal members.

9. The parties shall provide copy letters on service of documents listed in paragraphs 6, 7 and 8 above only to the Bar Council and the Law Society.
10. The Law Society member and the Bar Association member of the Panel shall alternate as Chairman of the Panel.
11. The Joint Tribunal shall in its absolute discretion decide on the appropriate procedure to resolve the dispute subject to the provisions of paragraphs 6, 7, 8 and 13. The Joint Tribunal may within 28 days of receipt of the documents referred to above, invite the parties to:-
  - (1) make representations in respect of the conduct of the dispute;
  - (2) adduce such or additional evidence or written or oral submissions as the Joint Tribunal deems necessary.
12. The Joint Tribunal may at its discretion stipulate or extend any time limit provided for in these Terms of Reference and Procedure.
13. Upon receipt of all documents and submissions and in any event within 28 days of receipt of the Statement of Reply the Joint Tribunal shall fix a time for any hearing, not later than 56 days thereafter or notify the parties that no hearing is considered appropriate.
14. The Joint Tribunal shall communicate its decision to the parties and to the Chairman and the President.
15. The Joint Tribunal shall give reasons for its decision which shall be final.
16. Payment of any sum found due shall be made within 14 days of the date of the notification in writing to the party required to make it of any award by the Joint Tribunal.
17. The Joint Tribunal shall have power to direct the payment of undisputed sums forthwith and payment shall be made within 14 days of any such interim award.
18. In the event of any failure to abide by the Joint Tribunal's decision on any award or interim award the Joint Tribunal shall refer the matter as professional misconduct to the Law Society or the Bar Council.

19. The Joint Tribunal may draft a guidance note for consideration by the Bar Council or the Law Society on the practice to be observed in similar circumstances.<sup>44</sup>

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<sup>44</sup> Members' attention is drawn to The Joint Tribunal's Guidance Note 1 (dated 11 July 2013) that "The Joint Tribunal has no authority to award costs, interest or disbursements. Its function is to try to resolve dispute over fees". The Bar Council and the Law Society have agreed with such guidance note. See Circular No.056/13.

**ANNEX 10**  
**(paragraph 10.13(c))**

**EXTRACT FROM THE LEGAL AID REGULATIONS,**  
**CAP. 91, REGULATION 12(7) & (8)**

- (7) Without prejudice to the right of solicitor or counsel to give up a case for good reason, any solicitor or counsel may give up an aided person case if, in his opinion, the aided person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Director or has required unreasonably that the proceedings be continued.
  
- (8) Where any solicitor or counsel exercises the right to give up an aided person's case-
  - (a) under the provisions of paragraph (7); or
  - (b) on the ground that the aided person has wilfully failed to provide the information to be furnished by him or in furnishing such information has knowingly made a false representation,

the solicitor or counsel shall make a report to the Director of the circumstances in which that right was exercised.

**ANNEX 11**  
**(paragraph 10.46)**

**NOTES FOR GUIDANCE ON DRESS IN COURT**

1. The following notes for guidance are applicable to both men and women barristers; and the Chief Justice has approved them:-
  - (1) The dress of barristers appearing in Court should be unobtrusive and compatible with the wearing of robes.
  - (2) Suits and dresses should be of dark colour. Dresses or blouses should be long-sleeved and high to the neck. Men should wear waistcoats (except in the summer months, when they are not expected to wear them). Shirts and blouses should be predominantly white or of other unemphatic appearance. Collars should be white and shoes black.
  - (3) Wigs should, as far as possible, cover the hair which should be drawn back from the face and forehead, and if long enough should be put up.
  - (4) No conspicuous jewellery or ornaments should be worn.
  - (5) Female barristers are allowed to wear decent and suitable black long trouser suits when appearing in Chambers and fully robed in open Court.

**Senior Counsel**

2. The silk gown is the correct gown for Senior Counsel.

**ANNEX 12**  
**(paragraph 10.55)**

**CONFESSIONS OF GUILT**

In considering the duty of an advocate retained to defend a person charged with an offence who confesses to Counsel himself that he did commit the offence charged, it is essential to bear the following points clearly in mind:-

- (1) that every punishable crime is a breach of the common or statute law committed by a person of sound mind and understanding;
- (2) that the issue in a criminal trial is always whether the accused is guilty of the offence charged, never whether he is innocent;
- (3) that the burden of proof rests on the prosecution.

Upon the clear appreciation of these points depends broadly the true conception of the duty of the advocate for the accused.

His duty is to protect his client as far as possible from being convicted except by a competent tribunal and upon legal evidence sufficient to support a conviction for the offence with which he is charged.

The ways in which this duty can be successfully performed with regard to the facts of a case are (a) by showing that the accused was irresponsible at the time of the commission of the offence charged by reason of insanity or want of criminal capacity, or (b) by satisfying the tribunal that the evidence for the prosecution is unworthy of credence, or, even if believed, is insufficient to justify a conviction for the offence charged, or (c) by setting up in answer an affirmative case.

It follows that the mere fact that a person charged with a crime has in the circumstances above mentioned made such a confession to his Counsel, is no bar to that advocate appearing or continuing to appear in his defence, nor indeed does such a confession release the advocate from his imperative duty to do all he honourably can do for his client.

But such a confession imposes very strict limitations on the conduct of the defence. An advocate "may not assert that which he knows to be a lie. He may not connive at, much less attempt to substantiate, a fraud."

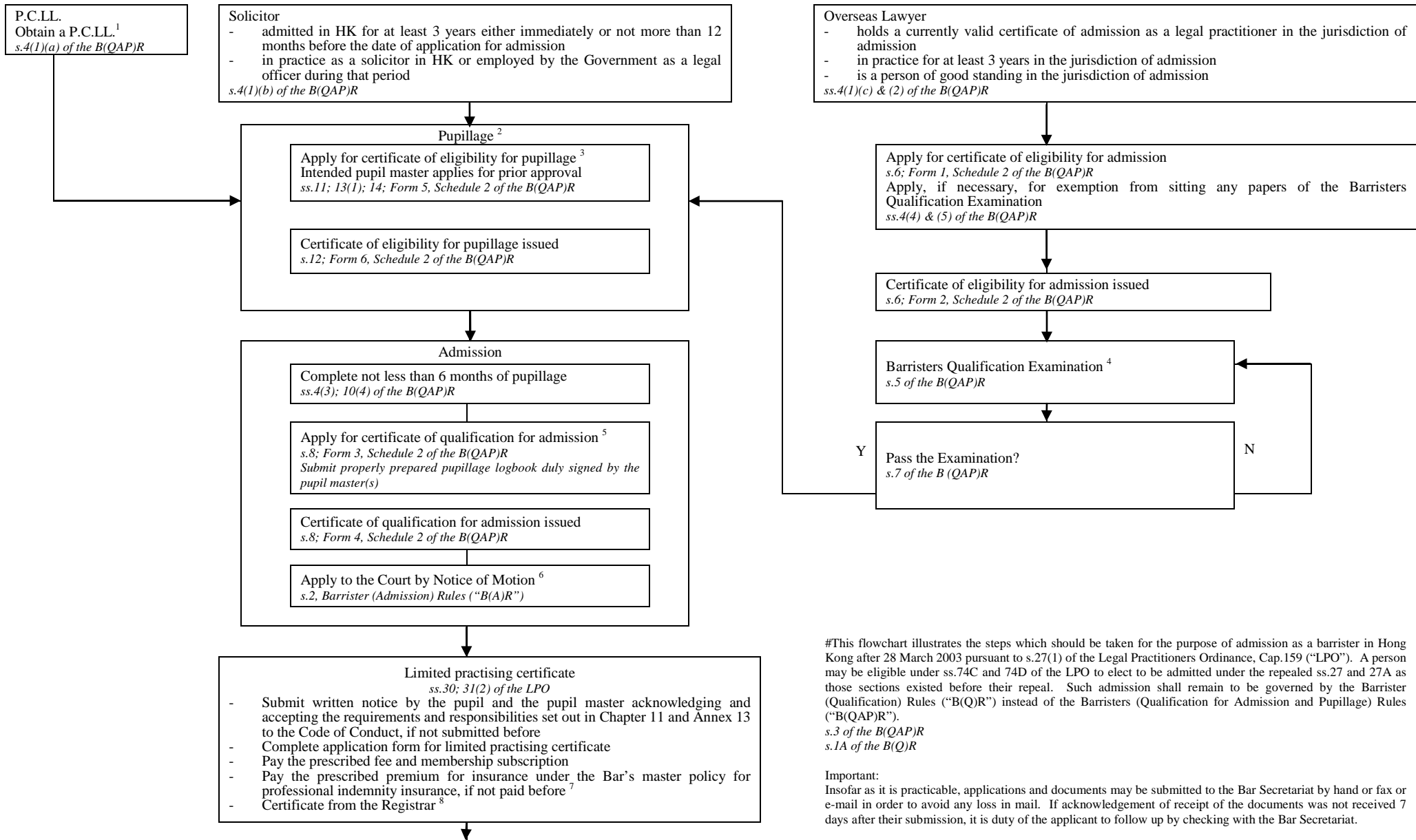
While, therefore, it would be right to take any objection to the competency of the Court, to the form of the indictment, to the admissibility of any evidence, or to the sufficiency of the evidence admitted, it would be absolutely wrong to suggest that some other person had committed the offence charged, or to call any evidence, which he must know to be false having regard to the confession, such, for instance, as evidence in support of an alibi, which is intended to show that the accused could not have done or in fact had not done the act; that is to say, an advocate must not (whether by calling the accused or otherwise) set up an affirmative case inconsistent with the confession made to him.

A more difficult question is within what limits, in the case supposed, may an advocate attack the evidence for the prosecution either by cross-examination or in his speech to the tribunal charged with the decision of the facts. No clearer rule can be laid down than this, that he is entitled to test the evidence given by each individual witness, and to argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged. Further than this he ought not to go.

The foregoing is based on the assumption that the accused has made a clear confession that he did "commit the offence charged," and does not profess to deal with the very difficult questions which may present themselves to Counsel when a series of inconsistent statements are made to him by the accused before or during the proceedings, nor does it deal with the questions which may arise where statements are made by the accused which point almost irresistibly to the conclusion that the accused is guilty but do not amount to a clear confession. Statements of this kind must hamper the defence, but the questions arising on them are not dealt with here. They can only be answered after careful consideration of the actual circumstances of the particular case.



**ANNEX 13 – PUPILLAGE**  
**PART I (Paragraph 11.15)**  
**ADMISSION UNDER S.27(1) OF THE LEGAL PRACTITIONERS ORDINANCE#**



#This flowchart illustrates the steps which should be taken for the purpose of admission as a barrister in Hong Kong after 28 March 2003 pursuant to s.27(1) of the Legal Practitioners Ordinance, Cap.159 ("LPO"). A person may be eligible under ss.74C and 74D of the LPO to elect to be admitted under the repealed ss.27 and 27A as those sections existed before their repeal. Such admission shall remain to be governed by the Barrister (Qualification) Rules ("B(Q)R") instead of the Barristers (Qualification for Admission and Pupillage) Rules ("B(QAP)R").  
 s.3 of the B(QAP)R  
 s.1A of the B(Q)R

Important:  
 Insofar as it is practicable, applications and documents may be submitted to the Bar Secretariat by hand or fax or e-mail in order to avoid any loss in mail. If acknowledgement of receipt of the documents was not received 7 days after their submission, it is duty of the applicant to follow up by checking with the Bar Secretariat.

Full practising certificate

*s.30 of the LPO*

- Submit properly prepared pupillage logbook duly signed by the pupil master(s)  
*Suggested minimum pupillage requirements, Annex 13 to the Code of Conduct*
- Complete application form for full practising certificate
- Pay the prescribed fee and membership subscription, if not paid before
- Pay the prescribed premium for insurance under the Bar's master policy for professional indemnity insurance, if not paid before

**This flowchart provides a convenient overview of the steps  
to be taken at various stages of pupillage.  
This is not a substitute for reference to the applicable Ordinance and Rules.**

## **Annotations**

### **1. P.C.LL.**

If the certificate is yet to be issued, an official written confirmation of the passing of all the P.C.LL. examinations issued by the relevant university may be acceptable for the purpose of the application for the certificate of eligibility for pupillage.

### **2. Pupillage in Hong Kong**

The period of approved pupillage in Hong Kong shall be a period of not less than 12 months and as defined in the Rules (*s.10 of the B(QAP)R*). The period may be reduced to a minimum of 3 months and application for reduction of pupillage shall be made to the Chief Judge of the High Court (*s.16 of the B(QAP)R*). The minimum period of pupillage undertaken with a particular barrister is expected to be 3 months. If the last part of the 12-month minimum period of approved pupillage with a particular barrister turns out to be less than 3 months due to exceptional circumstances, the Bar Council may still consider approving such an arrangement (*Circular No.75/03*).

### **3. Application for pupillage in Hong Kong**

The prescribed form for the application must be strictly adhered to or else it would be rejected (*s.11(2) of the B(QAP)R*). Both the application for the certificate of eligibility for pupillage and the intended pupil master's application to receive the pupil into his chambers must be submitted in a timely fashion (*s.11(1) of the B(QAP)R*). The Bar Council has no discretion to accept as part of the approved pupillage any period of work in the nature of pupillage undertaken prior to the issue of the certificate (*s.10(6) of the B(QAP)R*). To apply for the transfer and continuation of pupillage after the issue of the certificate of eligibility for pupillage, the applications by the pupil and the intended pupil master should still be submitted for the Bar Council's prior approval (*s.13(1) of the B(QAP)R*).

### **4. The Barristers Qualification Examination**

The Barristers Qualification Examination shall be held at least once every year.

### **5. Application for certificate of qualification for admission and limited practice**

The prescribed form for the application must be strictly adhered to or else it would be rejected (*s.8(2) of the B(QAP)R*). The pupil must submit the pupil masters' certificates (*s.10(4) of the B(QAP)R*) together with the properly prepared pupillage log book duly signed by the pupil masters (*Circular No. 23/04*). Pupils intending to commence limited practice following their admission as barristers may also submit their such applications at the same time. For such purpose, pupils and pupil masters should submit their respective written notices acknowledging and accepting the requirements and responsibilities set out in Chapter 11 and Annex 13 of the Code of Conduct. The Bar Council may consider at the same time the pupils' eligibility to commence limited practice subject to their admission.

## **6. Application for admission**

Some time may be taken before the pupils' applications to be admitted as barristers will be heard by the Court (*s.2(2) of the B(A)R*). Therefore, the motion paper, affidavits and other arrangements necessary for the applications should be prepared in advance as far as practicable.

## **7. Professional indemnity insurance**

Application for professional indemnity insurance coverage may be made any time during the first 6 months of pupillage. Pupils may arrange the insurance coverage in advance so that the evidence of their insurance coverage would be available by the time when they apply for commencement of limited practice. Pupils would be entitled to a refund of any overpaid premium in respect of the period between the expected date of commencement of limited practice stated by the pupils in their applications for insurance coverage and the actual commencement date subsequently approved by the Bar Council (*contact details of the insurance broker may be obtained from the Bar Secretariat*).

## **8. Declaration of admission**

It may take time after the pupil's admission as a barrister before the Registrar's certificate of his admission is issued. Pupils applying to commence limited practice may instead declare in writing of their admission and undertake to the Bar Council to file the Registrar's certificates of their admission as soon as the same are received (*standard form of declaration and undertaking may be obtained from the Bar Secretariat*).

## ANNEX 13

### **PART II : SUGGESTED MINIMUM PUPILLAGE REQUIREMENTS (paragraph 11.3)**

#### **Civil Law**

##### **Court Attendance:-**

1. Trials  
2 District Court or Court of First Instance trials
2. Applications  
2 interlocutory summonses in the District Court, Court of First Instance or Court of Appeal
3. Appeal  
1 appeal before a 3-man bench of the Court of Appeal

##### **Paper work:-**

1. 2 Statements of Claim
2. 2 Defences
3. 1 Reply
4. 2 Summonses and supporting Affidavits
5. 1 Advice
6. 1 Notice of Appeal
7. 1 Skeleton Argument

##### **Conferences:-**

Attendance at numerous conferences

#### **Criminal Law**

##### **Court Attendance:-**

1. Trials
  - (1) 2 trials in the Magistrates Court (1 for the prosecution and 1 for the defence)
  - (2) 1 full trial in the District Court and Court of First Instance respectively, preferably:-
    - (a) 1 trial for the prosecution and 1 for the defence; and,
    - (b) inclusive of a voir dire

- (3) 1 pre-trial review in the District Court or Court of First Instance
- (4) 1 plea day for the Duty Lawyer Service
- 2. Applications
  - 1 substantive application before a Judge of the District Court or Court of First Instance
- 3. Appeal
  - (1) 1 Magistracy Appeal before a Judge of the Court of First Instance
  - (2) 1 criminal appeal hearing before the Court of Appeal

**Paper work:-**

- 1. Drafting Notice(s) of Appeal against Conviction and Sentence, including Perfected Grounds
- 2. Drafting written submissions for criminal appeal

**Legal visits:-**

If possible, 1 visit to a detention centre, prison, etc

**Conferences:-**

Attendance at numerous conferences

**ANNEX 13**

**PART III : PUPILLAGE LOGBOOKS  
(paragraph 11.20)**

|  | Date | Nature of Case | Length | Argued or Settled | Nature of Pupil's Involvement | Pupil Master's Comments on Pupil's Involvement |
|--|------|----------------|--------|-------------------|-------------------------------|--|
| <b>Civil Law</b>                           |      |                |        |                   |                               |  |
| Court Attendances                          |      |                |        |                   |                               |  |
| Trials                                     |      |                |        |                   |                               |  |
| Interlocutory Applications                 |      |                |        |                   |                               |  |
| Appeals                                    |      |                |        |                   |                               |  |
| Others                                     |      |                |        |                   |                               |  |
| Paper Work                                 |      |                |        |                   |                               |  |
| Statements of Claim                        |      |                |        |                   |                               |  |
| Defences                                   |      |                |        |                   |                               |  |
| Replies                                    |      |                |        |                   |                               |  |
| Summonses and Supporting Affidavits        |      |                |        |                   |                               |  |
| Advices                                    |      |                |        |                   |                               |  |
| Notices of Appeal                          |      |                |        |                   |                               |  |
| Skeleton Arguments                         |      |                |        |                   |                               |  |
| Others                                     |      |                |        |                   |                               |  |
| <b>Criminal Law</b>                        |      |                |        |                   |                               |  |
| Court Attendances                          |      |                |        |                   |                               |  |
| Trials                                     |      |                |        |                   |                               |  |
| Applications                               |      |                |        |                   |                               |  |
| Appeals                                    |      |                |        |                   |                               |  |
| Others                                     |      |                |        |                   |                               |  |
| Paper Work                                 |      |                |        |                   |                               |  |
| Notices of Appeal                          |      |                |        |                   |                               |  |
| Written Submissions                        |      |                |        |                   |                               |  |
| Others                                     |      |                |        |                   |                               |  |
| Visits to detention centres, prisons, etc. |      |                |        |                   |                               |  |

## ANNEX 13

### **PART IV: GUIDELINES FOR A JUDGE TAKING ON A PUPIL AS MARSHALL (paragraph 11.14)**

The general obligations of a Judge taking on a pupil as marshall are as follows:-

1. He should ensure that the pupil is well-grounded in the rules of conduct and etiquette of the Court.
2. He should require the pupil to read his papers and do such research, prepare such notes or draft such documents as may assist him in his work as Judge.
3. He should require the pupil to attend at Court on sufficiently frequent occasions and to take proper notes of the proceedings during those occasions.
4. He should take a direct interest in and monitor all work which the pupil does as marshall.
5. He should afford the pupil with an opportunity to discuss as many as possible of the cases handled by him during the pupil's period of service as a marshall.
6. At the end of the relevant period of service as a marshall:-
  - (1) he should satisfy himself that the pupil has served as marshall with diligence and is a suitable person to practise as a barrister in Hong Kong; and,
  - (2) he should inform the pupil and the Bar Council of his assessment.