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Solicitors

CIRCULAR 10-479 (COM)

16 August 2010

**SOLICITORS: PRACTISING CERTIFICATES
NOTICE OF INTENTION TO APPLY FOR A PRACTISING
CERTIFICATE (2011)**

Practising Certificate (Special Conditions) Rules

1. Section 5 of the Practising Certificates (Special Conditions) Rules (“Rules”) came into effect in February 2003. Please refer to Circular **03-29 (SD)** and **04-310 (SD)** for details. Solicitors to whom the Rules apply must give at least 6 weeks’ notice to the Law Society before applying for their practising certificates. The “*Notice of Intention to apply for a Practising Certificate*” (“the Notice”) should be completed and declared **only if**:
 - a. you are applying for the issue of a practising certificate for the first time;
 - b. you have been censured or ordered to pay a penalty or costs by the Solicitor Disciplinary Tribunal since you were last issued a practising certificate;
 - c. you have failed or refused to give to the Society a sufficient and satisfactory explanation in respect of any matter relating to your conduct when invited to do so since you were last issued a practising certificate and have been notified in writing by the Society that you have so failed or refused;
 - d. you have been suspended from practice since you were last issued a practising certificate and the period of your suspension has expired;
 - e. you have had your name removed from or struck off the roll of solicitors since you were last issued a practising certificate and your name have been restored to the roll of solicitors;
 - f. you have become bankrupt since you were last issued a practising certificate and have been discharged;
 - g. you have had a monetary judgment (not being a judgment excepted in the Rules) given against you since you were last issued a practising certificate;

- h. you have not been in full-time practice of law for two continuous years immediately prior to the giving of notice of intention to apply for a practising certificate (refer to circular **04-310 (SD)** for details); or
 - i. you were a principal in or a consultant of a firm at the time of an intervention of the firm by the Society during the preceding 18 months.
- 2. Blank copies of the Notice will be dispatched on 24 August 2010. Firms which subscribe a DX box will receive the forms in their designated boxes. Firms without DX boxes will receive the forms by post. Any member who is required to complete the form but has not received a copy may download a copy by clicking [here](#).
- 3. The completed Notices should be declared and returned to the Society **by 24 September 2010**. Late applications will delay the renewal of the Practising Certificate which will bear the date of issue (from 1 January 2011) and will not be backdated. Please be reminded that the Standing Committee on Compliance takes a very serious view of members practising while uncertified.
- 4. Applicants should declare their Notices before a solicitor of another firm or company in order for the solicitor taking the declaration to comply with Principle 13.09 of The Hong Kong Solicitors' Guide to Professional Conduct Volume 1, 2nd edition. Click here for Circular **00-264 (SD)** on Principal 13.09. Any inappropriately declared form will be processed without prejudice to any conduct investigation into the matter.



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**Legal Practitioners Ordinance,
Practice Directions & Rules**

CIRCULAR 03-29 (SD)

27 January 2003

**PRACTISING CERTIFICATE
(SPECIAL CONDITION) RULES**

1. The Practising Certificate (Special Conditions) Rules ("Rules") will come into operation on 1 February 2003.
2. The conditions subject to which a practising certificate may be issued are set out in Schedule 1 to the Rules. They include the following:
 - (a) The solicitor shall complete a period of practice (not exceeding 24 months) as specified by the Council under the supervision of a solicitor holding an unconditional practising certificate.
 - (b) The solicitor may only practise in an employment that has been approved by the Council.
 - (c) The solicitor may only practise in a partnership that has been approved by the Council.
 - (d) The solicitor may only practise on his own account with the approval of the Council.
 - (e) The solicitor shall not sign cheques on a client account.
 - (f) The solicitor shall accumulate such CPD accreditation points or undertake and complete one or more courses of the Continuing Professional Development Scheme as specified by the Council.
 - (g) The solicitor shall undertake additional academic or training courses or examinations specified by the Council.

3. The above conditions may be imposed on a practising certificate in accordance with the Rules if:
- (a) the solicitor is applying for the issue of a practising certificate for the first time;
 - (b) the solicitor has been censured or ordered to pay a penalty or costs by the Solicitors Disciplinary Tribunal since he was last issued a practising certificate;
 - (c) the solicitor has failed or refused to give to the Society a sufficient and satisfactory explanation in respect of any matter relating to his conduct when invited to do so since he was last issued a practising certificate and has been notified in writing by the Society that he has so failed or refused;
 - (d) the solicitor has been suspended from practice since he was last issued a practising certificate and the period of his suspension has expired;
 - (e) the solicitor has had his name removed from or struck off the roll of solicitors since he was last issued a practising certificate and his name has been restored to the roll of solicitors;
 - (f) the solicitor has become bankrupt since he was last issued a practising certificate and has been discharged;
 - (g) the solicitor has had a monetary judgment (not being a judgment excepted in the Rules) given against him since he was last issued a practising certificate;
 - (h) the solicitor has not been in full-time practice of law for two continuous years immediately prior to the giving of notice of intention to apply for a practising certificate; or
 - (i) the solicitor was a principal in or a consultant of a firm at the time of an intervention of the firm by the Society during the preceding 18 months.
4. If a solicitor comes within any of the situations set out in paragraph 3 above, he shall not less than 6 weeks before he applies for a practising certificate give to the Society written notice of his intention to so apply in a specified form, unless the Society or Chief Judge otherwise orders.
5. Accordingly, under the Rules, newly qualified solicitors applying for a practising certificate for the first time will be required to give written notice of intention to apply for a practising certificate not less than 6 weeks before they apply for a practising certificate.

6. There has been a concession given to newly qualified solicitors to backdate their first practising certificate to the date of admission provided they apply within one month of admission. This concession will cease when the Rules come into effect on 1 February 2003.
7. Where a practising certificate has already been issued to a solicitor, the Society may add certain conditions to it, as set out in the Rules, if:
 - (a) the situation in paragraph 3(b),(c),(d),(g) or (i) above arises;
 - (b) the solicitor has entered into a voluntary arrangement with his creditors; or
 - (c) the solicitor has been charged with or convicted of an offence involving dishonesty or deception or an offence which in the opinion of the Council has compromised or impaired or is likely to compromise or impair the reputation of the profession.
8. Consequential amendments have been made to the Practising Certificate (Solicitors) Rules to include, in the form of application for a practising certificate, a requirement to indicate whether the applicant falls within any of the situations in paragraph 3 above and whether prior notice has been given to the Society.
9. The replacement contents page, the Rules and the replacement pages of the Practising Certificates (Solicitors) Rules for insertion into the Hong Kong Solicitors' Guide to Professional Conduct Volume 2 are attached to Circular 03-30 (SD).

Any enquiries can be directed at the Assistant Director, Regulation and Guidance on 2846-0503.



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Solicitors

CIRCULAR 04-310 (SD)

19 July 2004

SOLICITORS: PRACTISING CERTIFICATES

Practising Certificate (Special Conditions) Rules

1. Section 5 of the Practising Certificate (Special Conditions) Rules (“Rules”) requires in certain circumstances an applicant for a practising certificate to give to the Law Society 6 weeks’ notice of intention to apply.
2. One of the circumstances, as provided in section 3(h) of the Rules, is where the applicant has not been in *full-time practice of law for 2 continuous years* immediately prior to the giving of notice of intention to apply for a practising certificate to the Society.
3. The Council has agreed that for the purpose of section 3(h) of the Rules:
 - (a) a person is considered to have been in “practice of law” if he has been engaged in any one or more of the following:
 - (i) a period of service as a trainee solicitor, articled clerk or pupil that has been completed as a requirement of admission in the person’s jurisdiction of admission;
 - (ii) provision of legal services to the public in the capacity of a practising lawyer;
 - (iii) provision of legal services, otherwise than to the public, the nature of which is similar to those under subparagraph (ii) above;
 - (b) absence from full-time practice of law for a period of not more than 6 months in aggregate during the 2-year period referred to in section 3(h) will not be treated as having broken the continuity requirement;
 - (c) absence from full-time practice of law on statutory maternity leave:
 - (i) will not be counted towards the 6-month grace period allowed under sub-paragraph (b); and
 - (ii) will not be treated as having broken the continuity requirement under section 3(h) of the Rules.

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THE

LAW SOCIETY
OF HONG KONG

香港律師會

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Legal Practitioners Ordinance,
Practice Directions & Rules

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CIRCULAR 00-264 (SD)

4 September 2000

ADMINISTRATION OF OATHS AND DECLARATIONS

Principle 13.09 of Volume 1 of "The Hong Kong Solicitors' Guide to Professional Conduct"

1. Reference is made to Circular 90-45, which advised members not to take a declaration where their firm is acting for the declarant in the transaction affected by the declaration, and to Circular 95-52(PA), which advised members to consider the legal position of statutory declarations in conveyancing transactions in light of judgments concerning the admissibility of statutory declarations made before a solicitor whose firm acted for the declarant in preparing the relevant statutory declaration.
2. Principle 13.09 of Volume 1 of "The Hong Kong Solicitors' Guide to Professional Conduct" states as follows:

"13.09 When an oath must not be administered

A solicitor must not administer oaths and affirmations nor take declarations in proceedings or matters in which he or his firm is acting for any of the parties, or is otherwise interested.

Commentary

1. This principle applies to both contentious and non-contentious matters.
2. Because the administering of oaths and affirmations and the taking of declarations involve the discharge of a public office, this principle would, for example, prevent a solicitor from administering oaths and affirmations or taking declarations in the following circumstances:
 - (a) a solicitor must not take affidavits regarding proofs in bankruptcy when acting for a proving creditor or regarding the winding-up of an estate when acting for the personal representative of the testator;
 - (b) a solicitor who is employed part-time by another solicitor must not administer oaths for a client of such other solicitor;
 - (c) a solicitor who is in the full-time or part-time employment of a company must not administer oaths in matters in which the company is concerned."

3. By virtue of Practice Direction I.2, this principle has been in effect since 1 June 1995.
4. Members are reminded that the administering of oaths and affirmations and the taking of declarations involve the discharge of public office. Therefore solicitors must be quite independent of the matter when exercising these functions and are not permitted to do so on behalf of their clients.
5. For example, a solicitor whose firm is acting for an applicant company in a listing application with The Stock Exchange of Hong Kong would be in breach of principle 13.09 if the oaths or declarations in Form B were made before him. The same view would apply to a solicitor whose firm is acting for the sponsor of the applicant company in the listing application. If a firm is acting for a listed company under a general retainer, the principle would prevent any solicitor of that firm from administering the Form B oaths or declarations for any new director of that company upon his appointment.
6. This principle applies equally to solicitors of firms which have an association as defined in rule 1A of the Solicitors' Practice Rules, or a registered Association as defined in section 2 of the Legal Practitioners Ordinance. Therefore a solicitor whose firm has an association or an Association must not administer oaths and affirmations nor take declarations for a client of the associated firm.
7. Members are reminded that the fee payable for administering and receiving any oath, affidavit or affirmation is HK\$50 and the fee for marking each exhibit referred to in any oath, affidavit or affirmation is HK\$5 (Solicitors (General) Costs Rules).

Any member who requires advice on the above may telephone the Assistant Director, Regulation and Guidance on 2846 0503.