

For information

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Regulatory Framework under which The Law Society of Hong Kong
may intervene in a Law Firm's Practice**

Purpose

This paper briefs Members on the statutory framework provided under Part IIA of the Legal Practitioners Ordinance (“**Ordinance**”) (Cap. 159) for the intervention of law firms by The Law Society of Hong Kong (“**Law Society**”).

Background

2. The legal profession in Hong Kong, which comprises solicitors and barristers, are respectively regulated by the Law Society and the Hong Kong Bar Association. The main purpose of implementing a self-regulatory regime for Hong Kong’s legal profession is to ensure the professionalism and independence of Hong Kong legal practitioners. The profession itself is also best placed to respond to the ever-changing landscape of the international and local legal practices. This regime is crucial to upholding the rule of law and at the same time maintaining Hong Kong’s position as an international legal hub for deal-making and the provision of legal and dispute resolution services.

3. The Law Society and the Hong Kong Bar Association, in discharging their respective role as regulators of the two branches of the legal profession, operate within the regulatory framework as laid down under the Ordinance and its subsidiary legislation and must exercise their statutory powers and discharge their statutory functions and duties accordingly.

4. The Law Society, as the regulatory body of the solicitors’ branch of the legal profession, is empowered under the Ordinance to, among others:

- (a) issue annual practising certificates and certificates of registration to Hong Kong solicitors, foreign lawyers and foreign law firms;

- (b) investigate and refer allegations of professional misconduct to the Solicitors Disciplinary Tribunal;
- (c) intervene in a solicitor's practice in cases of dishonesty, undue delay, bankruptcy or other causes; and
- (d) establish rules for the conduct of solicitors and trainee solicitors.

5. These powers are elaborately defined under the Ordinance and they are necessary for the maintenance of a high standard for and sustainable development of the solicitors' profession which are essential elements of access to law and justice, hence crucial to the rule of law. The Law Society must at all times exercise its regulatory powers within the relevant legal framework and in compliance with the applicable statutory provisions.

Power of investigation

6. Where the Council of the Law Society ("Council") considers that a solicitor or foreign lawyer may be unfit to practise, the Council may, if it considers it necessary for the purpose of investigating the matter, require the solicitor, the foreign lawyer or his/her firm to produce or deliver relevant documents to the Council.¹ The Council may also appoint an inspector under section 8AA(1)(a) of the Ordinance to conduct an inspection of a law firm on its relevant files, documents and accounting records for the purpose of verifying the firm's compliance with the Ordinance, its subsidiary legislation and other relevant professional conduct rules.

Intervention in a Solicitor's Practice

7. The Law Society's power through its Council to intervene into a solicitor's practice is governed by Part IIA of the Ordinance. The intervention mechanism is an important regulatory tool under the legislative scheme and the design of the relevant powers conferred on the Law Society had the protection of lay clients and the public interests in mind. The circumstances under which the Council may intervene into a solicitor's practice include cases of suspected dishonesty², bankruptcy of the solicitor or foreign lawyer³, or breaches of other rules made under the Ordinance.⁴

¹ Section 8A of the Ordinance.

² Section 26A(1)(a) of the Ordinance.

³ Section 26A(1)(d) of the Ordinance.

⁴ Section 26A(1)(c) of the Ordinance.

8. In relation to a **suspected case of dishonesty**, section 26A(1)(a)(i) and (ii) of the Ordinance provides that the Council may resolve to intervene in a solicitor's practice if the Council:

- (a) has reason to suspect dishonesty on the part of:
 - (i) a solicitor or foreign lawyer; or
 - (ii) an employee or a trainee solicitor of a solicitor or foreign lawyer;and
- (b) considers that such intervention is in the interests of the public or the clients of the solicitor or foreign lawyer.

9. Where the Council has resolved to intervene in a solicitor's practice ("**the intervened firm**"), the Council may exercise the powers set out in Schedule 2 to the Ordinance, including the handling of money and the documents of the intervened firm as well as the mail addressed to the intervened firm.

10. An **intervention agent** (a firm of solicitors) would be appointed by the Council to assist in the intervention and in cases of intervention under section 26A of the Ordinance (e.g. cases of suspected dishonesty), the purpose of the intervention would be to wind up the practice of the intervened firm. The intervention agent would take possession of all documents and records in the possession of the intervened firm in connection with its practice.⁵ The intervention agent would notify all clients of the intervened firm informing them of the intervention and the need to instruct a new solicitor to act for them. The intervention agent would then locate the relevant files of the client and hand them over to the new solicitor instructed by the client.

Money held by the intervened firm

11. Under section 2 of Schedule 2 to the Ordinance, if the Council passes a resolution to the effect that all sums of money of the intervened firm (including all sums of money in any client accounts) shall vest in the Council, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be **held by the**

⁵ Section 7(1) and (2) of Schedule 2 to the Ordinance.

Council on trust for the persons beneficially entitled to them.⁶

12. The Council shall serve on the intervened firm and on any other person having possession of sums of money of the intervened firm a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money.⁷ If any person on whom the said notice has been served pays out sums of money at a time when such payment is prohibited by that notice, he shall be guilty of an offence and liable on summary conviction to a fine at level 5 (i.e. HK\$ 500,000).⁸

13. As trustee of the funds of the intervened firm, the Council may apply to the court for directions or determination of any question arising in the execution of a trust, including questions of the disposal and distribution of monies in the funds.⁹ The intervention agent would first verify any claims for return of client money paid to an intervened firm and the manner of release of such client money will be subject to authorisation by a court order to be obtained upon the Council's application to the court.

14. With regard to the intervention into the practice of Messrs. Wong, Fung & Co, more information may be obtained from the Law Society's website.¹⁰

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⁶ Section 2(1) of Schedule 2 to the Ordinance.

⁷ Section 2(3) of Schedule 2 to the Ordinance.

⁸ Section 2(6) of Schedule 2 to the Ordinance.

⁹ Order 85, Rule 2(2)(a) of the Rules of the High Court (Cap. 4A).

¹⁰ See:

(a) "Special Announcement", available at

https://www.hklawsoc.org.hk/pub_e/popup/20200201/20201231_Special_Announcement.asp;

(b) "Latest News on Intervention into the Practice of Messrs. Wong, Fung & Co by the Law Society"; available at https://www.hklawsoc.org.hk/pub_e/popup/20201231/en_20201231.asp; and

(c) "Press releases", available at https://www.hklawsoc.org.hk/pub_e/news/press.asp.