

Guidance Notes
for
Direct Professional Access
to Barristers by Members of the
Hong Kong Institution of Engineers

December 2017

Hong Kong Institution of Engineers

Disclaimer

This publication is prepared by the Hong Kong Institution of Engineers (HKIE) to provide guidance for reference by members of the Institution. Whilst reasonable efforts have been made to ensure the accuracy of the information contained in this publication, the HKIE nevertheless would encourage readers to seek appropriate independent advice from their professional advisers where possible and readers should not treat or rely on this publication as a substitute for such professional advice for taking any relevant actions. The HKIE (including its council, committees, task forces, members thereof, employees) will NOT accept responsibilities for any consequences resulting from the use of or failure to use this publication. Please refer to respective professional codes of conduct at all times.

Table of Contents

Foreword

Acknowledgement

A. Preamble to Direct Professional Access

B. Approach of Guidance Notes

C. Frequently Asked Questions on Direct Professional Access for Engineers

Appendices

I. Flowchart for Direct Professional Access

II. Recommended Standard Terms of Engagement of a Barrister Undertaking Direct Professional Access Work for Members of the Hong Kong Institution of Engineers (*Annex 6I of the Code of Conduct of the Bar of the Hong Kong Special Administrative Region*)

III. Direct Professional Access Rules (*Annex 6 of the Code of Conduct of the Bar of the Hong Kong Special Administrative Region*)

IV. List of further references

Foreword

With effect from 15 June 2015, Corporate Members of the Institution may instruct Hong Kong barristers directly for advice and appearance in tribunal proceedings in accordance with the Code of Conduct of the Hong Kong Bar Association. The agreement has turned a new page in the practice of our Members who may need access to legal advice and other services from barristers from time to time, particularly in performing dispute resolution and contract administration roles and functions in contracts nowadays.

A Task Force was established under the Alternative Dispute Resolution Committee of the Institution in order to provide guidance for reference by Members of the Institution on how engineers and barristers can work together in synergy for better services to clients. As President of the Institution, I am pleased to witness the publication of the “Guidance Notes for Direct Professional Access to Barristers by Members of the Hong Kong Institution of Engineers”. I am sure that these Guidance Notes will be of great assistance to our Members and I would like to express my appreciation to the efforts of the Task Force on Direct Professional Access to Barristers under the chairmanship of Ir Prof LAU Ching Kwong in preparing these Guidance Notes.

I wish Members every success in using the Direct Professional Access arrangement.

Ir CHAN Chi Chiu
President
Hong Kong Institution of Engineers

Foreword

The Hong Kong Bar Association is pleased to forge a closer relationship with members of the Hong Kong Institution of Engineers through our arrangement for Direct Professional Access to Barristers. We welcome the wider use of direct access as an aspect of barristers' services that has long been recognized as being within the purview of barristers' professional practice under our Code of Conduct. The Guidance Notes will provide a useful manual for users of the services.

We see the promotion for a wider use of direct access as being in line with a general drive towards streamlining professional services by removing unnecessary layers of professional referral to achieve efficiency in time and costs. With the wider use of arbitration and professional mediation in dispute resolution, we envisage more and more engineers will require efficient and direct professional services to be rendered by trained professionals whose core skills are in advocacy in dispute resolution. In terms of legal advice needed in relation to engineering contracts or to specific areas of engineering practice other than in the course of litigation, direct access to barristers' services will ensure that the barrister entrusted with the job is actually the one taking personal responsibility for it, without layers of delegation of the task in a law firm environment.

We look forward to working together to making Direct Access a double success for both professions.

Ms. Winnie Tam, S.C
Chairman
Hong Kong Bar Association

Acknowledgement

These Guidance Notes are prepared by the Task Force on Direct Professional Access to Barristers established under the Alternative Dispute Resolution Committee of the Hong Kong Institution of Engineers, with reference to the Code of Conduct of the Bar of the Hong Kong Special Administrative Region that is revised in July 2017 (“the Bar Code”), published by the Hong Kong Bar Association.

Membership of the Task Force is as follows:-

Chairman

Ir Prof Lau Ching Kwong

Members

Ir Prof Gary Soo

Ir Albert Leung

Ir Vincent Li

Ir Solomon Lam

Ir Sam Chan

Mr Otto Mak

A. Preamble to Direct Professional Access

With the legal and dispute resolution landscape kept evolving in the Hong Kong construction industry, engineers from time to time would need access to legal advice and other services from barristers, particularly in performing dispute resolution and contract administration roles and functions in nowadays contracts.

Solicitors are traditionally the first points of contact with clients who are looking for legal services. However, since some engineers are specialized in dealing with contract or legal matters nowadays, there is a need for accessing barristers directly by engineers.

The Hong Kong Institution of Engineers (“the HKIE”) and the Bar Council of the Hong Kong Bar Association have agreed that Corporate Members of HKIE may instruct Hong Kong barristers directly for advice and appearance in tribunal proceedings in accordance with Annex 6I of the Bar Code.

Further details are available at the Bar Code.

B. Approach of Guidance Notes

These Guidance Notes adopt a user-friendly approach. The substance and content are presented in the format of answers to frequently asked questions (“FAQs”) that come up in relation to direct professional access for Hong Kong engineers.

The FAQs cover how, when and what this direct professional access arrangement is put into operation. Further practical tips for working with barristers under the arrangement are also briefly provided for.

A flowchart is attached in the Appendices to illustrate the steps and considerations involved in invoking the direct professional access. The full text of the relevant documents and a list of further references are also included in the Appendices for ease of reference.

The soft copy of these Guidance Notes can also be found in the webpage of the Alternative Dispute Resolution Committee of the HKIE from the hyperlink below.

http://www.hkie.org.hk/div_com/adr.asp

C. Frequently Asked Questions on Direct Professional Access for Engineers

1. When will engineers be in need of legal services from lawyers on matters relating to their works?

Generally speaking, engineers (or their clients) may need the services of lawyers for all sorts of matters relating to their works which involve legal elements.

These include court proceedings in particular but also cover situation when engineers in performing their professional duties for themselves, their clients or organizations they are working for are involved in or in need of legal advices and appearances in tribunal proceedings and other alternative dispute resolution (“ADR”) processes, such as arbitration, mediation, adjudication, etc..

Some illustrative examples of these in relation to the construction industry include:-

- (1) legal advices to the obligation, duties and contractual and legal rights to the parties to contracts;
- (2) legal advices to support negotiation for and preparation of contracts, involving employers, engineers, contractors, suppliers or sub-contractors, etc.;
- (3) legal advices on preparation of tenders or queries (and answers thereto) during the tendering processes and on administrative law matters in this regard;
- (4) legal advices on claims, including their management, identification, preparation, defence, negotiation and settlement, and other and contractual issues;
- (5) legal advices related to tortious claims such as claims regarding negligence, personal injuries, safety and environmental matters etc.;
- (6) legal advices regarding insurance matters; and
- (7) legal advices and legal representation for resolution of disputes over the above by ADR methods, including mediation, adjudication, dispute resolution advisers and arbitration.

2. What are the differences between the services provided by a Hong Kong solicitor and those provided by a Hong Kong barrister?

The legal profession in Hong Kong is with two distinct branches, namely barristers (also known as "counsel") and solicitors.

Solicitors have limited rights of audience before the court (the rights to appear and speak before court), mainly at the Magistracy Courts and the District Courts. Whereas barristers have unlimited rights of audience in all levels of courts and tribunals where legal representation is allowed.

Generally, solicitors are traditionally the first points of contact with clients who are looking for legal services. Solicitors provide legal services and advices to clients, and they also deal with various kinds of non-contentious matters.

Barristers are specialists in particular areas of the law and the dispute resolution processes. When needed, barristers may be engaged on referral by solicitors to act for the clients. Their services are normally called for when detailed legal analysis and advices on certain legal issues are required and when contentious matters involving advocacy before courts, adjudicators, mediators, arbitrators or tribunals, or other ADR neutrals are involved.

Barristers must practise as sole-proprietors, whereas solicitors are allowed to practise together in a partnership. While barristers usually practise in a set of chambers, their legal, financial and professional duties are separate and distinct from those of the other barristers sharing those chambers. This helps to ensure the independence of all barristers when they provide services to their clients.

Further information can be found in the Legal Practitioners Ordinance (Cap. 159) from the hyperlink below.

<https://www.elegislation.gov.hk/>

3. What are the usual procedures in engaging the services of a Hong Kong barrister?

It may be well known that barristers in Hong Kong usually provide their service by referral from solicitors.

In more detailed terms, for legal works in a professional capacity in Hong Kong (e.g. litigation and other legal advisory work), a barrister may accept instructions from:-

- (1) solicitors in Hong Kong (see paragraph 5.16(a) of the Bar Code); and
- (2) certain categories of persons and bodies authorised by custom or the Bar Council (see paragraph 5.17, Annex 4 and Annex 5 of the Bar Code).

On top of the above, Chapter 13 of the Bar Code, which contains special rules for practising barristers undertaking arbitration and alternative dispute resolution work, foreign work or work in Hong Kong with certain overseas connections, enables a barrister to accept instructions from any person for any arbitration, mediation or adjudication whether taking place in or outside Hong Kong, 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 (paragraph 13.1(a) of the Bar Code).

The Bar Code can be found in the website of the Hong Kong Bar Association at the hyperlink below.

<http://www.hkba.org/content/code-conduct>

4. What does it mean by the direct professional access to Hong Kong barristers?

Direct professional access to Hong Kong barristers means that a barrister accepts instructions directly from a member of a “recognised professional body”, without the involvement of a solicitor, in any matter of a kind which falls generally within the professional expertise of the members of that recognised professional body.

The rules are detailed in Annex 6 (which are in Appendix III attached to these Guidance Notes) and Annexes 6A to 6I of the Bar Code.

HKIE is one of the recognized professional bodies under the Bar Code. See Annex 6I of the Bar Code.

In invoking the direct professional access, engineers and barristers are still required to observe and comply with their respective professional codes of conduct at all times.

5. Is this direct professional access arrangement available to Members of the HKIE?

As said, yes. With effect from 15 June 2015, HKIE is also included in the list of professional bodies who may have direct access to the services of Hong Kong barristers. Annex 6I of the Bar Code specifically provides the recommended standard terms of engagement of a practicing barrister undertaking direct professional access works for Members of the HKIE. These terms have been discussed and agreed between the HKIE and the Hong Kong Bar Council.

Full text of Annex 6I of the Bar Code can be found in Appendix II attached to these Guidance Notes or in the website link below.

<http://www.hkba.org/content/code-conduct>

6. Which classes of members of the HKIE and in what capacity are they eligible to directly instruct a Hong Kong barrister?

Corporate Members (which includes Fellows and Members) of the HKIE in their capacity as a director, partner, member or employee of a company, firm or other body in performing their professional duties for themselves, their clients or organizations they are working for are eligible to directly instruct a Hong Kong barrister. They are also termed as the “Qualified Instructing Member”.

7. What kind of pre-requisite conditions should the instructing Member fulfil before instructing a barrister directly?

In essence, a practising barrister may only accept instructions from a Qualified Instructing Member of the HKIE when:-

- (1) the direct professional access works required to be performed relates to a matter of a kind which falls generally within the professional expertise of the HKIE Member concerned; and
- (2) the Qualified Instructing Member is identified at the time of giving instructions and confirms that he/she or the company, firm or other body of which he/she is a director, partner, member or employee is insured against claims for professional negligence in respect of the matter giving rise to such instructions. In other words, the Qualified Instructing Member needs to be covered by adequate and valid professional indemnity insurance.

Refer to Annex 6I of the Bar Code for details.

8. In detail, what kind of services can a barrister provide to Members of the HKIE under the Direct Professional Access Arrangement?

Examples of services that a barrister can provide to Members of the HKIE under the direct professional access arrangement include the provision of legal advices and the appearance in tribunal proceedings.

Apart from the general examples highlighted in answers to Question 1, some specific examples include the following:-

- (1) To provide legal advices and drafting on all aspects arising from construction or engineering projects, contracts, tenders, tendering processes, etc.;
- (2) To provide legal advices and drafting for ADR related matters and for dispute resolution, including advices on challenges to ADR neutrals in such matters;
- (3) To provide legal advices during all pre-action preparatory stages prior to litigation;
- (4) To provide legal advices, drafting and advocacy work on all aspects of engineering projects and contracts outside Hong Kong; and
- (5) To appear as advocate/ representative in tribunal proceedings, arbitration, mediation, adjudication, dispute resolution advisor process, and other ADR processes.

The above is not an exhaustive list. A barrister, however, cannot accept instructions under the direct professional access arrangement for the following works:-

- (1) To receive or handle client's monies;
- (2) To perform substantial administrative works;
- (3) To do *inter-partes* work e.g. conducting daily correspondences for the client;
- (4) To perform litigation work before the Hong Kong courts (for which instructions from solicitors on behalf of the client are required); and
- (5) To do works where the barrister considers in the interest of the client that a solicitor should be instructed.

9. How could a HKIE Member find a suitable barrister to provide the services he needs?

A list of the practising barristers in Hong Kong (“the Bar List”) is regularly published by the Hong Kong Bar Association and is available on the website of Hong Kong Bar Association at the hyperlink below.

<http://www.hkba.org/Bar-List>

Some sets of barristers’ chambers also maintain their own websites and provide information on their practices and expertise.

Apart from legal qualifications, quite a number of practising barristers in Hong Kong also possess academic and professional qualifications in other fields, such as surveying and engineering. Information of this can also be found in the Bar List and the respective web sites of the chambers.

10. How should a Member of the HKIE instruct a barrister, and how should the fees to be paid to the barrister be agreed?

When a Member of the HKIE instructs a barrister, the instructing Member, i.e. the Qualified Instructing Member, should contact the barrister or his/her clerk or secretary. Generally, unless otherwise agreed, it is the obligation of the instructing Member, jointly with the company, firm or other body of which he/she is a director, partner, employee or member to be responsible for the payment of the barrister’s fees.

A barrister shall be entitled to require payment of his/her fees at the time of accepting instructions. Otherwise, the barrister’s fees shall be paid promptly upon submission of a fee note.

Unless otherwise agreed, a fee note will be submitted at the conclusion of the matter on which a barrister is instructed. If, however, that matter is protracted, an interim fee note or notes may be submitted at intervals of not less than two months.

A brief (i.e. instructions to a barrister to represent the client before a court, inquiry, arbitrator or other tribunal) will only be accepted by a barrister after a fee has been agreed with the Qualified Instructing Member. In the case of instructions other than a brief, it is matter for agreement between the Qualified Instructing Member and the barrister (or his/her clerk or secretary) whether the fees shall be agreed before the instructions are accepted or at any later date.

The recommended standard terms of engagement at Appendix II should be adopted unless otherwise modified or agreed by all involved.

An illustrative flowchart is attached at Appendix I attached to these Guidance Notes.

11. What should the instructing HKIE Member do in order to get the best out of the services of the barrister?

The following is a non-exhaustive list for an instructing Member to consider in instructing a barrister under the direct professional access arrangement:-

- (1) Find the suitable barrister;
- (2) Agree to adopt or adapt as appropriate the standard terms at Appendix II (as recommended in Annex 6I of Bar Code);
- (3) The Qualified Instructing Member shall always be the first point of contact with the barrister accepting the work;
- (4) It is the duty of the Qualified Instructing Member to identify himself/herself as the instructing Member at the time of giving instructions and confirm the existence of an adequate and valid professional indemnity insurance against claims for professional negligence (the barrister is also covered by professional indemnity insurance procured on his/her own);
- (5) Make sure the scope of work is well defined and any specific requirements are well communicated to the barrister;
- (6) Identify the client/ party for which the instructions are given (and, in contentious matters, the opposing parties as well) for conflict of interest checking;
- (7) Prepare the relevant information and background papers and allow reasonable opportunity for perusal by the barrister for deciding whether the instructions

are appropriate for direct professional access in accordance with the direct professional access arrangement;

- (8) Set and agree the timelines for the work to be carried out by the barrister;
- (9) Agree on the most appropriate mode of retainer or terms of engagement;
- (10) Agree on the fees with the barrister.

12. Is there any other work that a barrister can do under direct instruction from a HKIE Member without invoking Direct Professional Access or involving a Hong Kong solicitor?

In addition to the above, a barrister can also act in the following capacities under direct instructions from a HKIE Member:-

- (1) Arbitrator;
- (2) Adjudicator;
- (3) Mediator;
- (4) Dispute resolution advisor;
- (5) Third-party neutral in other processes of ADR.

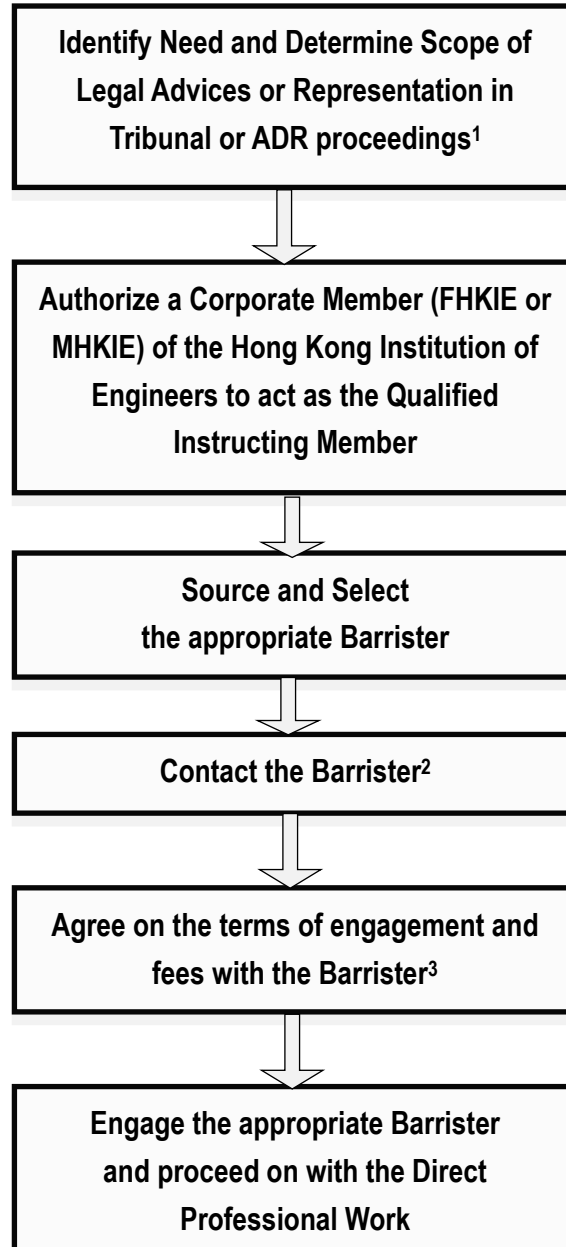
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Appendices

Appendix I

Illustrative Flowchart for Direct Professional Access

Illustrative Flowchart for Direct Professional Access



Footnotes:

1. These legal services required shall be related to a matter of a kind which falls generally within the professional expertise of the Hong Kong engineers. Examples may include construction claims and contract disputes assessments.
2. This is for identifying the Qualified Instructing Member and the represented company, firm or body and for confirming being covered by professional negligence insurance. In contentious matters, the opposing parties should also be identified for conflict of interest checking.
3. Reference may be made to the recommended standard terms of engagement and modifications as appropriate may be agreed on.

Appendix II

Recommended Standard Terms of Engagement
of a Practising Barrister
Undertaking Direct Professional Access Work
for Members of the Hong Kong Institution of Engineers

(Annex 6I of the Code of Conduct of the Bar of the Hong
Kong Special Administrative Region)

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

**RECOMMENDED STANDARD TERMS OF ENGAGEMENT
OF A PRACTISING BARRISTER UNDERTAKING
DIRECT PROFESSIONAL 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.

Appendix III

Direct Professional Access Rules and Recommended Standard Terms of Engagement

(Annex 6 of the Code of Conduct of the Bar of the Hong
Kong Special Administrative Region)

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

**DIRECT PROFESSIONAL ACCESS RULES AND
RECOMMENDED STANDARD TERMS OF ENGAGEMENT**

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.

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

Preamble

- (i) These Standard Terms of Engagement have been approved by the Bar Council.
- (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.

Appendix IV

List of Further References

Website

1. <http://www.doj.gov.hk/eng/legal/index.html>
2. <http://www.hkcliv.org/en/topics/hkLegalSystem/all.shtml>
3. <http://www.hklawsoc.org.hk/>
4. <http://www.hkba.org/>

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8. Ian Dobinson and Derek Roebuck, *Introduction to Law in the Hong Kong SAR*, 2nd edn, Sweet & Maxwell, Hong Kong, 2001
9. Peter Wesley-Smith, *An Introduction to the Hong Kong Legal System*, 3rd edn, Oxford University Press, Hong Kong, 1998