

# **Overseas Lawyers Qualification Examination**

## **HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT**

### **Standards, Syllabus and Materials**

#### **STANDARDS**

Candidates will be expected:-

- (i) to be familiar with the law and rules of professional conduct affecting and governing practice as a solicitor in Hong Kong;
- (ii) to be familiar with the Solicitors' Accounts Rules, in particular the principles relating to solicitors' clients accounts; and,
- (iii) to be able to identify and analyse professional conduct issues (including issues in relation to solicitors' accounts) which may arise in practice, to advise with respect to such issues and to take appropriate decisions on such issues in relation to his and his firm's practice. He will be expected to give comprehensive reasons for his advice and decisions; and
- (iv) to display the knowledge and experience of the above matters.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

#### **SYLLABUS**

1. **Solicitors in Private Practice**
  - Practising Certificates
  - Insurance
  - Solicitors' Practice Rules
  - Supervision of a solicitor's office
  - Fee sharing
  - Restrictions on unqualified persons

2. **Rule 2 of the Solicitors' Practice Rules**
3. **Obtaining Instructions**
  - **Solicitors' Practice Promotion**
    - (a) The Code
    - (b) Unacceptable Practice Promotion
4. **Money Laundering**
5. **Fees**
  - Duty to inform client
  - Estimates and agreed fees
  - Interim bills
  - Bills of costs and disbursements
  - Taxation of costs
  - Suing for fees
  - Overcharging and unreasonable fee arrangements
  - Payments on account of costs and disbursements
  - Contingency fee arrangements
6. **Retainer**
  - Accepting instructions
  - Grounds for refusing to act
  - Duties owed during retainer
  - Termination of retainer
7. **Competence and Quality of Service**
  - Duty to act competently
  - Claims against a solicitor
  - Law Society enquiries and investigations
8. **The Fiduciary Duty**
  - Conflicts of interest
  - Secret profits and gifts from clients

9. **Confidentiality**

- The duty of confidentiality
- The duty of disclosure
- Joint retainers
- Moving to new employment

10. **Conflicts of Interest**

- Refusal to accept instructions
- Conflict arising during retainer
- Conveyancing transactions - Rule 5C, Solicitors' Practice Rules

11. **The Litigation Solicitor**

- The solicitor as advocate in civil and criminal cases
- Duties to the Court
- Witnesses
- Settlement of proceedings
- Legal Aid
- A solicitor's duties in civil and criminal matters before action commenced or before charges laid
- Rule 5D letters in criminal cases
- Contingency fees in criminal and civil matters after commencement of action

12. **Relations with other Solicitors**

- Contact with the other solicitor's client
- Reporting misconduct

13. **Relations with the Bar**

- Instructing Counsel
- Court attendances
- Barristers' fees

14. **Relations with Third Parties**

- Duty of fair dealing
- Dealing with unrepresented parties
- Taking oaths, affirmations and declarations

15. **Professional Undertakings**

- Giving and receiving undertakings
- Breach of undertakings
- Undertakings as to costs
- Undertakings in conveyancing transactions

16. **Discipline**

- Powers and role of the Law Society of Hong Kong
- Solicitors' Disciplinary Tribunal

17. **Solicitors' Accounts**

- Client account (management and use of funds therein)
- Firm account (management and use of funds therein)
- Solicitors accounts generally (including relevant Rules and Practice)
- Clients instructions as to funds and duties in respect thereof
- Handling of mixed moneys

**MATERIALS**

- The Hong Kong Solicitors Guide to Professional Conduct
- The Legal Practitioners Ordinance and all subsidiary legislation
- The Solicitors Accounts Rules
- Manual on Solicitors' Accounting
- The Solicitors Practice Promotion Code
- The Practice Directions 1990 as amended from time to time
- The Code of Conduct of the Bar
- *Sandor & Wilkinson*, 'The Professional Conduct of Lawyers in Hong Kong' (Student edition), LexisNexis, 2008

**It is recommended that these materials be brought into the examination.**