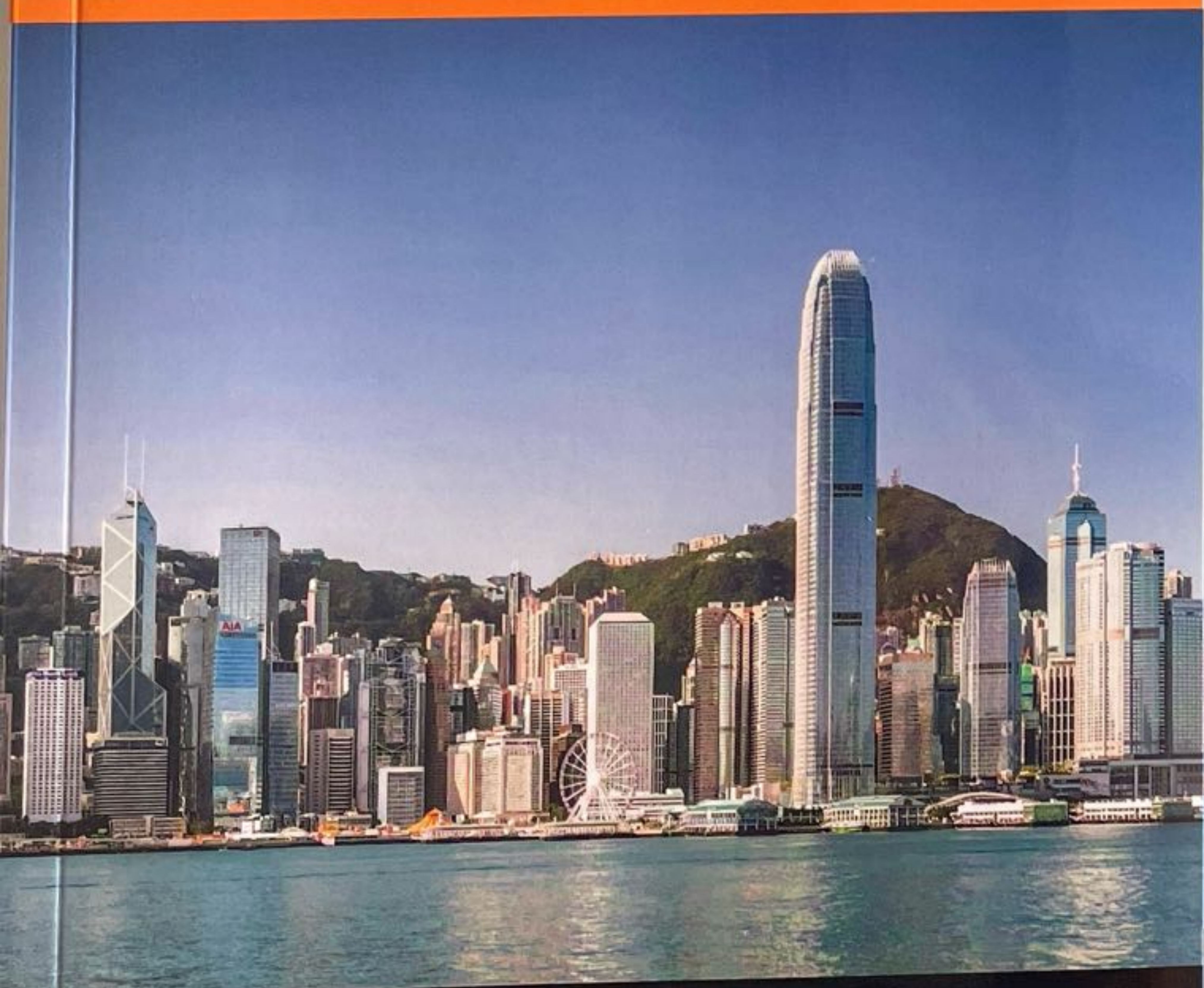


Wilkinson's Professional Conduct of Lawyers in Hong Kong

Desk Edition 2026 (Volume 1)

Gary Meggitt

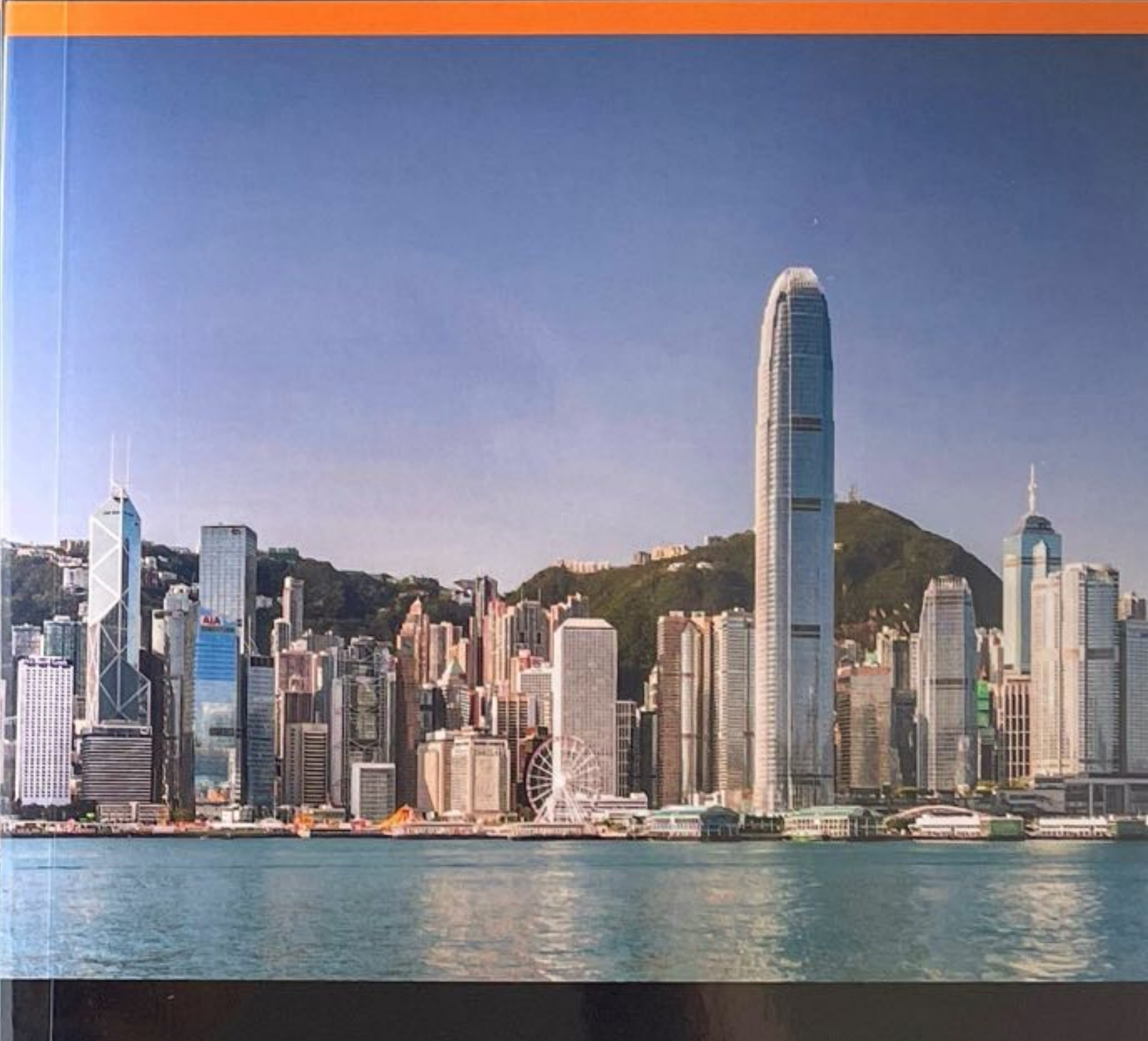


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Wilkinson's Professional Conduct of Lawyers in Hong Kong

Desk Edition 2026 (Volume 2)

Gary Meggitt



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A Solicitor v The Law Society of Hong Kong [2005] HKCU 738 (unreported, CACV 246/2004, 9 June 2005) (CA)..... [15-110]

A Solicitor v The Law Society of Hong Kong [2006] HKCU 1109 (unreported, CACV 107/2005, 7 July 2006) (CA)..... [5-18], [5-36], [13-18]

CHAPTER 5

PRACTICE PROMOTION AND THE OBTAINING OF BUSINESS

1. PRACTICE PROMOTION

1.1 Introduction

1.1.1 The Practice Promotion Code

[5-1] The regulatory regime for practice promotion in Hong Kong is found in the Hong Kong Solicitors' Practice Promotion Code (the 'Promotion Code'), first promulgated in 1992 under rule 2AA of the Solicitors' Practice Rules (Cap 159H). It is far more liberal than any previous regime in Hong Kong, although it is not as free as in some other jurisdictions.

1.1.2 Relationship between the Promotion Code and the Solicitors' Practice Rules (Cap 159H)

[5-2] The main statutory provision governing advertising is rule 2AA of the Solicitors' Practice Rules (Cap 159H) which states:

- (1) Subject to subrule (2), a solicitor shall not publicise or otherwise promote his practice or permit his practice to be publicised or otherwise promoted.
- (2) Subrule (1) does not apply to anything done in accordance with the Solicitors' Practice Promotion Code as made from time to time by the Council with the prior approval of the Chief Justice.

[5-3] The Promotion Code itself declares that all practice promotion must have regard to the Solicitors' Practice Rules (Cap 159H) and other professional obligations and requirements. Of particular significance in this regard is rule 2 of the Solicitors' Practice Rules which provides that a solicitor must not, in the course of practising as a solicitor, do or permit to be done on his behalf anything which compromises or impairs or is likely to compromise or impair:

- (a) his independence or integrity;
- (b) the freedom of any person to instruct a solicitor of his choice;
- (c) his duty to act in the best interests of his client;
- (d) his own reputation or the reputation of the profession;
- (e) a proper standard of work; and
- (f) his duty to the court.

These requirements are, therefore, paramount over the provisions of the Promotion Code and the Promotion Code must be construed and applied in this light.

1.1.3 Meaning of 'practice promotion'

[5-4] Paragraph 1 of the Code defines practice promotion as the marketing by whatever method of that solicitor, his practice or his firm or the professional legal services offered by him or it, and includes:

- (1) any exposure, whether or not paid for, in any public medium;
- (2) the issue of any publication or communication (including orally) in any medium to any client, prospective client or the public generally which has the character of an advertisement or promotional material;
- (3) any public appearance; and
- (4) any contact with a prospective client initiated by or on behalf of the solicitor.

1.1.4 The scope of the Promotion Code

[5-5] Paragraphs 2-4 describe the scope of and controls effected by the Promotion Code. Paragraph 2 provides that the Code relates to the terms of practice promotion by or with the permission of a solicitor. Paragraph 3 provides that, subject to the Promotion Code, the solicitor is free to engage in practice promotion in any way he thinks fit. According to paragraph 4, however, all practice promotion must have regard to (and is subject to) the Solicitors' Practice Rules (Cap 159H) and other professional obligations and requirements.¹ Thus, the Legal Practitioners' Ordinance (Cap 159) and Solicitors' Practice Rules are paramount.

¹ For example, Practice Direction G2 permits a solicitor to state on his business card any academic or professional qualifications held by him, but not to state an examination qualification (such as 'PCLL' and similar terms) which is not a professional qualification. The same stricture applies to a firm's letterhead.

1.1.5 Responsibility of solicitors to ensure compliance with Promotion Code

[5-6] Solicitor Advocates who promote their practice are also bound to conform to the Promotion Code.² It is the responsibility of all solicitors to ensure that their practice promotion, whether conducted by themselves or by any other person, complies with the provisions of the Promotion Code. The responsibility cannot be delegated. Where a solicitor becomes aware of any impropriety in or in relation to any practice promotion on his behalf, he must use his best endeavours to have it rectified or withdrawn as appropriate. Any practice promotion activity relating to a solicitor shall be presumed, subject to proof by the solicitor to the contrary, to have been issued (in the form in which it was issued) with his authority.³

1.2 General principles governing practice promotion

[5-7] According to paragraph 6(a)-(n) of the Promotion Code:

Practice promotion shall be decent, legal, honest and truthful and shall not:

- (a) be likely to mislead or deceive, whether by inclusion or omission;
- (b) contain any adverse remark or implication concerning any other solicitor or solicitors, in particular in any comparison of services, practice or fees;
- (c) make any claim or imply that the solicitor is, or that his practice is or includes an expert in any field or practice or generally. It is permissible, however, to refer to his knowledge, qualifications, experience or area(s) of practice provided that such a claim can be justified;
- (d) identify any client or any item of client's business without the prior written consent of the client;
- (e) be defamatory;
- (f) refer to the solicitor's success rate;
- (g) imply that a solicitor can obtain results by improper means;
- (h) be intrusive, offensive or otherwise inappropriate having regard, among other things, to the manner, medium or frequency of approach, or surrounding circumstances;
- (i) be calculated or likely to take advantage of the weak or weakened mental, physical or emotional state of the recipient or intended recipient;
- (j) take place in or in the immediate vicinity of a court, police station or place of detention in relation to a person who has been or may be charged with, or has been convicted of, any offence;
- (k) be directed at a person who has made known a desire not to be contacted;

² See Law Society's Code of Advocacy for Solicitor Advocates, paragraph 3.3.
³ Paragraph 5, Promotion Code.

- (l) be in any manner which may reasonably be regarded as having the effect of bringing the solicitors' profession into bad repute.
- (m) be inappropriate having regard to the best interests of the public, or
- (n) breach any other code of advertising practice for the time being in force which applies to solicitors.

[5-8] We shall consider each head separately.

1.2.1 Shall not be likely to mislead or deceive, whether by inclusion or omission: Paragraph 6(a) — misleading advertisements and brochures

(a) Advertisement by firm of ISO certification

[5-9] In Hong Kong, ISO certification is governed by the Hong Kong Quality Assurance Certification Scheme which is operated by the Hong Kong Quality Assurance Agency (HKQAA), a government-subsidized body established by the Industry Department. The ISO is a series of international standards set by the International Organization for Standardization prescribing requirements for quality management and quality assurance for the manufacture of goods and provision of services. The Law Society has, for some time, permitted solicitors' firms to advertise the fact that they have been awarded ISO certification, provided the promotional material is honest and truthful and not likely to mislead or deceive.

[5-10] Whether such promotional material was misleading was the subject of protracted litigation in *Solicitor v The Law Society of Hong Kong*.⁴ The appellant's firm offered services to tenants of several public housing estates in connection with the Government's Tenants' Purchase Scheme introduced in 1998 by which tenants were entitled to purchase the flats in which they were living. The appellant solicitor's firm had been awarded an ISO 9001 certificate by the Hong Kong Quality Assurance Agency, and it distributed circulars to relevant tenants stating, *inter alia*, 'The legal services for conveyancing of our solicitors firm was assessed by the HKQAA to be up to the service standard of the ISO 9001'. The Law Society commenced disciplinary action against the firm on the grounds that the brochure was misleading and readers would believe that the certification applied to the firm's legal work in the area of conveyancing and not merely to its management systems. The Disciplinary Tribunal found the allegation that the brochure was misleading to be proved and imposed a fine and the Court of Appeal upheld this decision. On further appeal to the Court of Final Appeal, the court (per Chan PJ) held that the point that had to be decided was whether the HKQAA had in their certification

⁴ *A Solicitor v The Law Society of Hong Kong, ex parte S-J* (2003) 6 HKCFAR 570 [2004] 1 HKLRD 214, [2003] HKCU 1411 (CFA).

process assessed the firm's legal services or merely their management systems. The answer was that the firm's legal services were not included in the certification. The brochure was, therefore, misleading to its readers. In the light of mitigating circumstances, however, no sanction was required to be imposed.

[5-11] Following this judgment, the Law Society issued an amended Circular requiring solicitors' firms to make it clear to recipients of promotional materials that the ISO certification related only to the management systems of the firm and not to its legal services.⁵ The Circular provides as follows: 'Where a firm has been awarded ISO certification by ISO certification agencies in Hong Kong which are accredited by the Hong Kong Accreditation Service in relation to an area of its practice,⁶ the ISO certification logo may be used on the firm's promotional material (except business cards)'. This includes the firm's letterhead, leaflets and other promotional material. Where the logo is used on the firm's letterhead and leaflets, the area of the firm's practice to which the certification relates must be clearly stated and, if the certification only relates to a particular area of the firm's practice, this must be stated immediately beneath the logo in font no smaller than the words 'Certified Company' which appear within the logo. Further, where the logo is used on the firm's promotional material and advertisements, it must also comply in all respects with the Solicitors' Practice Promotion Code. The following phrase, which should be legible and referable to the ISO Certification Logo (for instance by the use of an asterisk), should be inserted whenever the Logo is permitted to be used on the firm's promotional materials:

This ISO [area of practice] Quality Certificate is awarded for the quality of the system of management of our [area of practice] department/practice. It is not awarded for, and makes no representation as to, the quality of our legal services.

[5-12] Breach of these guidelines might incur disciplinary sanctions.

(b) Reference to 'Bar Admissions'

[5-13] The Law Society has advised that reference to 'Bar Admissions' has been used by some solicitors and international law firms in the description of their qualifications in promotional materials and websites. Examples would include a generic heading showing admissions in respect of a particular lawyer and might list 'Hong Kong' as a place of admission. The Law Society commented that this gives the impression that the

⁵ Law Society Circular No 7 of 2003.

⁶ It should be noted that the Circular applies to all ISO certification and is not restricted to ISO certification 9000 or 9002 (see Law Society Circular No 208 of 2000 (now superseded by Circular No 7 of 2003)).

particular lawyer is admitted to the Hong Kong Bar when, in fact, he is admitted as a Hong Kong solicitor.

[5-14] Members were reminded that as Hong Kong solicitors, they must not use the term 'Bar Admissions' in such a manner that may mislead others to have an erroneous impression that they are admitted as barristers in Hong Kong.⁷

(c) **The firm's letterhead — 'commissioner of oaths' forbidden**

[5-15] A partner may not describe himself or the firm as 'Solicitors and Commissioners of Oaths' in the letterhead or other promotional material. Although solicitors are authorised under the Legal Practitioners Ordinance (Cap 159) to exercise the powers of commissioners of oaths, they are not appointed as such by the Chief Justice under the Oaths and Declarations Ordinance (Cap 11) which provides in the interpretation section that a commissioner 'is one duly appointed by the Chief Justice' under any enactments in force in Hong Kong.

(d) **Fees 'from' or 'upwards of'**

[5-16] Practice promotion by stating that a solicitor's fees will be 'from' or 'upwards of' a stated figure, or words of a similar phraseology, is improper and constitutes a breach of the Promotion Code.⁸ These words are and have been open to abuse as bait without actually ever fulfilling the threshold when it comes to billing the client.

1.2.2 Shall not contain any adverse remark or implication concerning any other solicitor or solicitors, in particular in any comparison of services, practice or fees: Paragraph 6(b)

[5-17] The Promotion Code prohibits any advertisement which contains remarks adverse to other firms or compares services, practice or fees. To say 'Our fees are the most reasonable in Hong Kong' is not an adverse remark, but it is dishonest and misleading as there is no possible basis for the claim. To say, 'Other firms try hard, but we try harder' is both adverse⁹ and impossible to justify.

⁷ Law Society Circular No 495 of 2012.

⁸ Law Society Circular No 204 of 2000.

⁹ Interestingly, the Code in several US states prohibits 'self-laudatory' advertising statements (DR2-102(B)) as they are not susceptible to proof. *Bates v Arizona State Bar* (1977) 433 US 350 at 366, (1977) 97 S Ct 2691 at 2700.

[5-18] In *A Solicitor v The Law Society of Hong Kong*,¹⁰ a solicitor was charged, inter alia, with breach of paragraph 6(b) of the Promotion Code. It was alleged that in an interview published in Ming Pao Daily News, the solicitor was reported as saying that Hong Kong solicitors were spoilt by the high fees that they charged in the property market. In another article published in Next Magazine, the solicitor's girlfriend was quoted as calling other lawyers 'vampires' or 'bloodsuckers' with the solicitor reportedly nodding his head in agreement. This was alleged to have involved the solicitor in making adverse remarks about or casting aspersions upon fellow solicitors. On appeal, the Court of Appeal held that there had been insufficient evidence before the Tribunal to support these allegations which he had publicly denied.

1.2.3 Shall not make any claim or imply that the solicitor is, or that his practice is or includes an expert in any field of practice generally; it is permissible, however, to refer to his knowledge, qualifications, experience or area(s) of practice provided that such a claim can be justified: Paragraph 6(c)

[5-19] Although a solicitor may not advertise himself as an 'expert' in any field of practice, he may specify his qualifications, experience and areas of practice. This means that a solicitor may say that he is 'experienced in a particular area of law'. Originally the use of the description 'specialist' was also forbidden, but this restriction has now been removed. If a solicitor makes such a claim, this might result in a court holding the solicitor to a modified standard of care if he was sued in negligence.¹¹

1.2.4 Shall not identify any client or any item of any client's business without the prior written consent of the client: Paragraph 6(d)

[5-20] It is, therefore, improper to identify clients' names in published articles without the clients' consent.

¹⁰ *A Solicitor v The Law Society of Hong Kong* [2006] HKCU 1109 (unreported, CACV 107/2005, 7 July 2006) (CA).

¹¹ The general standard of care and skill expected of a solicitor is that of a reasonably competent and diligent solicitor, as per *Midland Bank Trust Co Ltd v Hett, Stubbs & Kemp (a firm)* [1979] Ch 384, [1978] 3 WLR 167. If he or she undertakes work with a degree of specialism the standard is that of the reasonably competent solicitor specialising in that field, as in *Argyll (Duchess) v Beuselinck* [1972] 2 Lloyd's Rep 172.

1.2.5 Shall not be defamatory: Paragraph 6(e)

[5-21] This requirement is self-explanatory.

1.2.6 Shall not refer to the solicitor's success rate: Paragraph 6(f)

[5-22] This limitation is justifiable because in most cases it would be misleading to the potential client.

1.2.7 Shall not imply that a solicitor can obtain results by improper means: Paragraph 6(g)

[5-23] One might envisage an advertisement saying 'We have an inside track into Mainland China' by a firm advertising joint venture experience, but that does not necessarily imply resort to improper means and it is suggested that the implication of impropriety needs to be clear before the objection can arise. In one case, a solicitor produced and distributed Christmas cards depicting the Deputy Director of the Xin Hua News Agency and enclosed the solicitor's business card. The solicitor apparently admitted to the disciplinary tribunal that this amounted to (amongst other charges) a breach of paragraph (g) of the Promotion Code.¹² Whether such an act would constitute a clear implication of impropriety remains unresolved.

1.2.8 Shall not be intrusive, offensive or otherwise inappropriate having regard, among other things, to the manner, medium or frequency of approach, or surrounding circumstances: Paragraph 6(h)

[5-24] Given the basic philosophy of the Promotion Code which is to enable the public to receive and the lawyers to provide information about the legal service of individual solicitors and firms, this principle should not be interpreted restrictively. In particular, as we shall see later, targeted solicitation by fax or mail is permitted. The difficulty with the provision is that there is no objective standard set.

[5-25] In *A Solicitor v The Law Society of Hong Kong*,¹³ a solicitor was charged, inter alia, with breach of paragraph 6(h) of the Promotion Code. It was alleged that the solicitor had engaged in a massive publicity campaign involving interviews with the press which had been extensively covered together with posed photographs of him sitting next to his girlfriend and

¹² See *Hong Kong Lawyer*, April 1996 at 42.

¹³ *A Solicitor v The Law Society of Hong Kong* [2005] HKCU 525 (unreported, CACV 107/2005, 15 April 2005) (CA).

photographs of his office. There had also been many advertisements placed on public light buses, advertisements in the Mass Transit Railway and daily advertisements in six daily newspapers. It had also been reported that the solicitor would offer to his clients his girlfriend's services as a marriage counsellor and offer free condoms. The gravamen of the complaint was the sheer scale of the solicitor's attempts to promote himself. The solicitor was found to have breached paragraph 6(h) (and paragraph 6(l)) of the Promotion Code by the Solicitors Disciplinary Tribunal. On appeal, the Court of Appeal upheld the finding. By themselves the advertisements on buses and in the Mass Transit Railway might not have been objectionable either as to content or frequency, but they assisted in providing the context in which the allegation of breach had been made. The solicitor's constant exposure to the public through the press and mass media justified the conclusion reached by the Tribunal, and the appeal was accordingly dismissed.

[5-26] A further instance of conduct unbecoming (which might also have been considered as 'offensive' advertising) was the subject of disciplinary proceedings in *Re A Solicitor (Paul Tse No 1)*.¹⁴ The solicitor had demonstrated in Central wearing only swimming trunks and holding a banner covering his lower parts which stated 'Legal Rights Are Inborn: Mine Too'. He was also charged with publishing a circular in his name which was distributed to members of the legal profession advertising the protest and containing disparaging remarks about the Law Society as well as an invitation for members to attend a disciplinary hearing against him which was to be held on the same day, notwithstanding a previous ruling by the Solicitors Disciplinary Tribunal that the hearing was to be heard in camera. He was found to have committed conduct unbecoming a solicitor by the Solicitors Disciplinary Tribunal and appealed to the Court of Appeal.

[5-27] The court held that, as an officer of the court, a solicitor was expected to abide by rulings made by the Tribunal. If there was dissatisfaction with a ruling or if the law was somehow deficient, appropriate representations could be made to the authorities. Rulings could not, however, be flouted. This had been done in respect of the second complaint. Although there was no doubt that a solicitor was entitled to exercise his right to freedom of expression guaranteed by the Basic Law that right was not unrestricted. The solicitor clearly had a right to demonstrate in public and send circulars to his fellow lawyers, but the prohibition upon conduct unbecoming a solicitor could not be said to constitute an unjustifiable limitation on the right of expression. Lawyers enjoyed public respect and occupied a central role in the administration of justice. In the case of professional misconduct, apart from the solicitor's own reputation, the reputation of the legal profession was also affected. Public confidence in both the solicitor and the profession

¹⁴ *Re A Solicitor (Paul Tse No 1)* [2006] 2 HKC 159 (CA).

was prejudiced by such conduct. The same would equally be true in situations involving serious misconduct of a solicitor in his private affairs. It was difficult to envisage a situation in which tarnishing the solicitor's own reputation would not also tarnish the reputation of the profession. It was clear that any restriction on a fundamental freedom had to be formulated with sufficient precision so that a person might be able to regulate his conduct and foresee to a reasonable degree the consequences of any given action. The need for rigidity, albeit desirable, must be balanced against the danger of excessive rigidity. The level of precision required depended to a considerable degree on the content of the instrument in question, the field it was designed to cover and the number and status of those to whom it was addressed. In the case of the conduct of professionals such as solicitors in both their private and professional capacities, this balance was particularly acute. Principle 1.02 was not too vague or uncertain that no clear guidance was afforded to solicitors in knowing what might amount to professional misconduct or unprofessional conduct. The solicitor's behaviour was unbecoming, undignified and completely inappropriate given his position as an officer of the court. The finding of the Tribunal should be upheld.

1.2.9 Shall not be calculated or likely to take advantage of the weak or weakened mental, physical or emotional state of the intended recipient: Paragraph 6(i)

[5-28] The personal solicitation of patients in hospitals or old person's homes, whether for a retainer in respect of litigation or for the drafting of a will, would plainly be forbidden under this head. Clearly, personal visits or solicitation of persons charged with offences could fall within it. Mailed information to such persons might also fall within its prohibition if the content of the letter falls within the description.

1.2.10 Shall not take place in or in the immediate vicinity of a court, police station or place of detention in relation to a person who has been or may be charged with, or has been convicted of, any offence: Paragraph 6(j)

[5-29] This prohibition constitutes one element of the bundle of 'anti-touting' measures in criminal cases promulgated by the Law Society.¹⁵ The provision overlaps with the previous paragraph, as the person targeted is likely also to be in a highly emotional state. If the approach in the first instance is to the parents or relatives of a young defendant, that also is prohibited. Not just personal solicitation but also handing out flyers (one-page promotion) in the 'vicinity' is forbidden.

¹⁵ See the discussion of the improper obtaining of business later in this chapter at paragraph [5-56].

1.2.11 Shall not be directed at a person who has made known a desire not to be contacted: Paragraph 6(k)

[5-30] If a faxed promotional letter receives a return fax 'No more please', that should end the communications.

1.2.12 Shall not be in any manner which may reasonably be regarded as having the effect of bringing the solicitors' profession into disrepute: Paragraph 6(l)

[5-31] An advertisement that would breach this test would be one by a solicitor showing a partially undressed model in his office while he sat at the telephone, under the guise of promoting his 'other' business, a topless model agency.¹⁶ In 1995, a solicitor was censured and fined in Hong Kong for, inter alia, sending out Christmas cards showing herself with the Director of Xin Hua News Agency.¹⁷ The advertising campaign of the solicitor in *A Solicitor v The Law Society of Hong Kong*¹⁸ described at paragraph [5-25] regarding paragraph 6(h), was also found to have breached paragraph 6(l) of the Promotion Code.

1.2.13 Shall not be inappropriate having regard to the best interests of the public: Paragraph 6(m)

[5-32] This provision is very broad and goes wider than merely bringing the profession into disrepute.

1.2.14 Shall not breach any other code of advertising practice for the time being in force which applies to solicitors: Paragraph 6(n)

[5-33] This would encompass any codes of practice relevant to advertising generally.

1.3 Extraterritorial practice promotion

1.3.1 Extraterritorial advertising must comply with regulations in the jurisdiction in which it occurs

[5-34] According to paragraph 8(1) of the Promotion Code, any practice promotion outside Hong Kong shall comply with any relevant

¹⁶ See (1986) New Law Journal 957, where the 'other' business was ruled dishonourable by the Disciplinary Tribunal.

¹⁷ See *Hong Kong Lawyer*, April 1996 at 42.

¹⁸ *A Solicitor v The Law Society of Hong Kong* [2005] HKCU 525 (unreported, CACV 107/2005, 15 April 2005) (CA).

regulations applicable to legal practitioners admitted to practice in the jurisdiction in which the professional activity is undertaken. According to paragraph 8(2), the Promotion Code does not apply to practice promotion outside Hong Kong unless it relates to a solicitor's practice in Hong Kong and the promotion is received in Hong Kong.¹⁹

1.4 Practice promotion on television and radio and in public places is permitted

[5-35] It used to be the case that practice promotion by way of advertising or solicited promotion on television or radio, in the cinema or on any hoarding or display in or readily visible or audible from a place to which the general public habitually had access (whether with or without payment) was forbidden. This prohibition was, however, removed in 1996, and the effect of this change is that solicitors may now advertise on television or radio and in public provided none of the earlier restrictions laid down in the Promotion Code are breached.

[5-36] Although it is now permitted for solicitors to advertise in public places, the manner and frequency of such advertisements must not be such as to be excessive or such as would bring the profession into disrepute. As we have seen above, this is illustrated clearly in *A Solicitor v The Law Society of Hong Kong*.²⁰

1.5 Waivers

[5-37] Paragraph 11 of the Promotion Code empowers the Council to waive a breach or to condone a prospective breach of the Code.

1.6 Person to person solicitation and the Promotion Code

[5-38] Before the promulgation of the Promotion Code, an attempt by a solicitor or his agent directly and actively to encourage a person to hire the lawyer for a particular matter was regarded as one form of 'touting' and expressly forbidden under the former rule 2 of the Solicitors' Practice Rules (Cap 159H). The 'ambulance chasing' lawyer has traditionally been regarded as a threat to the respect in which the public is expected to hold the legal profession. Active pursuit of the client-to-be who is a criminal defendant is still forbidden by the package of anti-corruption measures

¹⁹ It is our opinion that the Code should also apply outside Hong Kong where there are no local rules on advertising by lawyers.

²⁰ *A Solicitor v The Law Society of Hong Kong* [2006] HKCU 1109 (unreported, CACV 107/2005, 7 July 2006) (CA).

and controls now current, including paragraph 6(j) of the Promotion Code (not to promote in or in the immediate vicinity of a court or police station or place of detention). Furthermore, the prospective client must not be pressured into the relationship, but must enter it voluntarily.²¹ Finally, the approach must not be calculated to take advantage of the weak or weakened mental, physical or emotional state of the recipient (paragraph 6(i) of the Promotion Code). All these are still appropriate safeguards for criminal defendants or civil litigants who have suffered physical injury.

1.7 Direct mailing: Targeting or solicitation by fax, mail or e-mail

[5-39] Direct mailing is the form of advertising that, arguably, is closest to solicitation or touting in its effects on the participant, who is not a current or past client of the solicitor. The Promotion Code does not forbid direct mail solicitation. Rather, it provides that, subject to the provisions of the Promotion Code, a solicitor may engage in practice promotion in any way he thinks fit.²² The promotion must not, however, be intrusive, offensive or otherwise inappropriate having regard, among other things, to the manner, medium and frequency of approach and to surrounding circumstances.²³ Whatever ambiguity there might be in the Hong Kong Promotion Code, it is now clear that direct mail solicitation is permitted in Hong Kong.

1.8 Other issues relating to practice promotion

1.8.1 Instructions from recovery agents

(a) Possible criminal liability and severe disciplinary action for assisting recovery agents

[5-40] Principle 4.01, Commentary 17 of the third edition of the Solicitors' Guide states:

Solicitors are prohibited from taking cases referred to them by recovery agents as they will be in breach of Principle 3.01 and Circular 12-176.

[5-41] Solicitors are also told to refuse to accept instructions from recovery agents (Principle 5.01, Commentary 6, Solicitors' Guide) and to be cautious when accepting instructions for a client through 'unqualified intermediaries' (Principle 10.27, referring to Circular 12-176).

[5-42] This Principle and Principle 3.01 were added to the Guide as the result of the Court of Final Appeal judgment in *Winnie Lo v HKSAR*.²⁴

²¹ Rule 2, Solicitors' Practice Rules (Cap 159H).

²² Paragraph 3, Promotion Code.

²³ Paragraph 6(h), Promotion Code.

²⁴ *Winnie Lo v HKSAR* [2012] 1 HKC 537, (2012) 15 HKCFAR 16 (CFA).

Prior to the judgment, there was concern about the activities of recovery agents in promoting litigation. The history and issues are now discussed.

[5-43] The Law Society has made it clear that it is professional misconduct for solicitors knowingly to accept instructions from accident victims whose claims are financed by recovery agents (who are unqualified persons without an interest) offering to assist accident victims in their claims for compensation (usually in exchange for a share of the proceeds of the law suit). The Law Society's position is stated in Law Society Circular No 176 of 2012 (replacing but largely repeating Law Society Circular No 674 of 2009 on the matter). Circular 12-176 can be found as an Appendix to Chapter 3 of the Solicitors' Guide. The current Law Society Circular was issued after the Court of Final Appeal judgment in *Winnie Fok* which the appellant solicitor's conviction for being involved in a conspiracy to 'maintain' another's action was overturned as she was not an 'officious intermeddler' when simply fulfilling her role as a solicitor in the claim. In that case also, the Court of Final Appeal further affirmed at paragraph 78 of the judgment:

... the offences of maintenance and champerty²⁵ possess the required legal certainty to qualify as duly 'prescribed law' for (Basic Law) Article 39 purposes.

[5-44] The Circular identifies the usual features of Recovery Agency Contracts which could result in prosecution. The contracts entered into between the recovery agents and the accident victims ('recovery agency contracts') usually provide that:

- (1) the recovery agent will finance the claim by paying legal fees and other disbursements;
- (2) the accident victim has to pay over a share of his compensation to the recovery agent;
- (3) *the accident victim has to appoint a lawyer of the recovery agent's choice* (emphasis added);
- (4) either the accident victim gives full authority to the recovery agent to accept any settlement or if the accident victim refuses to accept a settlement offer, the recovery agent can withdraw his assistance;
- (5) the accident victim has to authorise his lawyer to pay over the recovery agent's share to the recovery agent directly;
- (6) the accident victim cannot terminate the recovery agency contract until the claim is completed.

²⁵ 'Champerty' is the process whereby one person bargains with a party to a lawsuit to obtain a share in the proceeds of the suit. 'Maintenance' is the support or promotion of another person's suit initiated by intermeddling for personal gain.

[5-45] The Law Society also notes that such recovery agents are not professionally qualified or subject to any code of professional conduct; there is no compulsory insurance covering any claims directed at them and they are of unknown financial backing. Moreover, the majority of accident victims probably qualify for Legal Aid, which renders it unnecessary for a third party to finance their claims. Since accident compensation in Hong Kong is assessed on the basis of actual loss, the victims will not be adequately compensated if part of their compensation has to be paid over to recovery agents. The more seriously injured victims may not have sufficient means to maintain their livelihood.

[5-46] The Law Society sought advice from Senior Counsel on the legality of a number of recovery agency contracts and was advised that the contracts are champertous and are unenforceable.

[5-47] Maintenance (of which champerty is a more serious form) remains a criminal offence in Hong Kong, and the recovery agents are liable to be prosecuted.

(b) **Acts of misconduct in assisting a recovery agent**

[5-48] The Law Society is of the view that any solicitor who is aware that an accident victim's claim is financed by a recovery agent under a recovery agency contract should properly advise the accident victim on his legal position, and, where appropriate, advise him to apply for Legal Aid. If a solicitor acts for an accident victim in a legal action financed by a recovery agent, he will have committed professional misconduct in the following respects.

[5-49] The solicitor will be in breach of rule 2 of the Solicitors' Practice Rules (Cap 159H) (the essential standards), in particular paragraphs (a), (b), (c) and (d).

[5-50] The solicitor will be in breach of Principle 4.01 (Solicitor's duty to inform client about likely costs and to inform him to apply for legal aid in an appropriate case) of the Hong Kong Solicitors' Guide to Professional Conduct. As a corollary to this Principle, the Law Society is unlikely to accept any suggestion by a solicitor that he does not know his client's claim is to be financed by a recovery agent as he has every practical and ethical reason to discuss financing of the claim with his client. The misconduct is aggravated if the solicitor subsequently seeks to claim costs from the defendant knowing that in fact his client has no liability to pay him.

[5-51] The triangular relationship between the recovery agent, the accident victim and the solicitor will put the solicitor in an inextricable position of conflict, as there is a strong incentive for the solicitor to maintain his relationship with the recovery agent who may be a constant source of business and compromise his duties to the accident victim when differences

arise between the recovery agent and the accident victim. This will render the solicitor in breach of the fiduciary duty of openness and fairness owed to the client and which forms the Governing Principle in Chapter 7 and Principle 7.01 of the Guide (as well as the requirement of Principle 3.01, Solicitors' Guide, to maintain his professional independence).

[5-52] If a solicitor acting for an accident victim financed by a recovery agent subsequently claims costs from the defendant, knowing that the accident victim does not have any liability to pay him, the solicitor may be faced with serious disciplinary sanction including possible suspension from practice or even having his name struck off the roll of solicitors.

(c) **Civil liability as well as criminal liability for assisting a recovery agent**

[5-53] If a solicitor passes on part of the accident victim's compensation to the recovery agent, then, apart from committing professional misconduct, he renders himself liable to a civil claim by the accident victim. Further, depending on the exact arrangement between the solicitor and the recovery agent, the solicitor may be guilty of the offence of aiding and abetting the offence of champerty. He may also render himself in breach of section 49(1) of the Legal Practitioners Ordinance (Cap 159). In *S-J v Ip Hon Ming*,²⁶ a recovery agent and a solicitor acting for clients referred to his firm by the recovery agent were convicted of multiple charges of champerty. The charges related to the representation of 25 claimants for damages for personal injuries over a period of five years. The first defendant set up a limited company as a recovery agent and advertised a claims handling service for the victims of accidents. His fee was 20% of any compensation recovered. The claimants were then referred to the second defendant solicitor, who negotiated settlements of all the claims (from which sums he deducted his costs). In no case were the costs taxed. The first defendant received over HK\$ 1 million as his share in the champertous arrangements and the second defendant almost HK\$ 4 million by way of costs. At first instance, the District Court judge sentenced the defendants to 12 months and 15 months imprisonment, suspended for 18 months and 24 months, respectively. The Secretary for Justice applied for a review of the sentences on the grounds that they were manifestly inadequate. Lam VP subsequently increased the sentences to two years and two months for the first defendant and three years and two months for the second defendant.

(d) **Liability of employed solicitors and unqualified staff for assisting a recovery agent**

[5-54] The Law Society also points out that the above acts of misconduct can be committed by the principals of a firm as well as their

²⁶ *S-J v Ip Hon Ming* [2015] 1 HKC 143 (CA).

employed solicitors. In conducting legal action for an accident victim, an employed solicitor owes the same duties to the accident victim as does his principal. Any principals who instruct or cause their employed solicitors to commit professional misconduct are likely to be liable for an even heavier penalty. The Circular points out also that legal executives and clerks are under the same disciplinary regime as solicitors pursuant to section 2(2) of the Legal Practitioners Ordinance (Cap 159).

(e) **Duty to report misconduct regarding recovery agents**

[5-55] The Law Society states that it will have no hesitation in instituting disciplinary proceedings against any solicitor who commits the type of misconduct referred to above. Any solicitor who is aware of any such misconduct is under a duty to report the same to the Council as required under Principle 11.03 of the Guide.

2. IMPROPER OBTAINING OF BUSINESS AND COMMISSION SHARING

2.1 'Touting' and commission sharing

2.1.1 'Touting' replaced by 'improper obtaining of business'

[5-56] Prior to the introduction of the new rules 2 and 2A of the Solicitors' Practice Rules (Cap 159H), the former Practice Rules expressly forbade 'touting'.²⁷ The word was used by lawyers and members of the public to cover a variety of methods of improperly obtaining business. It must be remembered that the concept, vague as it was, existed at a time when there were severe, almost total, restrictions upon the active marketing and seeking of legal business by solicitors and it, therefore, was equivalent to saying that the solicitor directly or indirectly had actively sought a retainer from a stranger. The extreme examples of paying a commission to agents in return for business or 'ambulance chasing' came, of course, within its definition. But these extreme examples did not exhaust the concept. It seems to us that, since the word and its shifting connotations are no longer part of the official vocabulary of the Solicitors' Practice Rules (Cap 159H) or the Solicitors' Guide, it should be honourably retired from service. Instead, the activity should be described as 'the improper obtaining of business'. In other words, the issue to be addressed is when might there be improper promotion or marketing and obtaining of business under the new regime. As we have seen above, the extreme examples of the past (commission paying and ambulance chasing) are still forbidden by the present regime.

²⁷ Rule 2 of the Solicitors' Practice Rules (Cap 159H) provided: 'A solicitor shall not obtain or attempt to obtain professional business by— (a)...; (b)...; or (c) doing or permitting to be done anything which may reasonably be regarded as touting'.

promptly.²³⁴ The extent and frequency of the information supplied and the degree of consultation will depend on the circumstances and on the type and urgency of the matter and of the experience or otherwise of the client in that type of matter.²³⁵

[6-176] There may be cases, however, where the solicitor would be justified in withholding information.²³⁶ For example, this may be the case where information of this nature could be harmful to the client's mental or physical condition. In such a case, the solicitor must decide whether or not it is in the interests of his client that he should disclose such information which may be contained, for example, in a medical report.²³⁷

12.8.2 The legal duty

(a) Duty of solicitor to disclose all relevant information to client

[6-177] Once retained, a solicitor has a duty to disclose to his client all relevant information which comes to his knowledge. An interesting illustration is *Mortgage Express Ltd v Bowerman & Partners*.²³⁸ A solicitor had been retained to act for both mortgagor and mortgagee in the purchase of land by the mortgagor. The property had been valued for mortgage purposes at a substantial figure, but, before the mortgage was agreed, the solicitor became aware that the property had been purchased by the vendor at a very much smaller figure just before the present sale. The solicitor did not, however, inform the mortgagee. The mortgagor defaulted on repayment of the loan and the property was eventually sold by the mortgagee at a substantial loss. The mortgagee sued its solicitor on the basis that he had failed in his duty by not providing this information to his client. The Court of Appeal held that a solicitor who, in the course of investigating title, discovered facts which a reasonably competent solicitor would have realised might have a material bearing on the transaction, had a duty to pass on this information to his client and, in failing to do so, he had acted negligently.²³⁹

²³⁴ Commentary 5 of Principle 5.12, Solicitors' Guide.

²³⁵ Commentary 5 of Principle 5.17, Solicitors' Guide.

²³⁶ Commentary 6 of Principle 5.17, Solicitors' Guide.

²³⁷ Commentary 4 of Principle 8.03, Solicitors' Guide. In *Delco Participation BV v Stephenson Harwood* [2019] HKCU 720, [2019] HKCFI 410, Deputy Judge Field touched upon the operation of the duty to disclose all relevant information to client and Principle 8.03 of the Solicitors' Guide after the cessation of the retainer.

²³⁸ *Mortgage Express Ltd v Bowerman & Partners* [1996] 2 All ER 836 (CA, Eng).

²³⁹ A solicitor was suspended from practice for six months in *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5 for failing to keep her client sufficiently updated on the progress of the case and correctly advised on the matter on which the solicitor had been retained.

12.9 Duty to charge reasonably²⁴⁰

[6-178] The solicitor must only charge either what has been agreed or what is reasonable and overcharging is professional misconduct.²⁴¹

13. THE DURATION OF THE RETAINER

13.1 The 'entire contract' rule

[6-179] Clearly, the duration of a retainer will depend upon the particular circumstances. The general principle is that, in the absence of an agreement to the contrary,²⁴² the solicitor is retained to complete the business which is the subject matter of the retainer. In the words of Goff LJ in *Gamlen Chemical Co (UK) Ltd v Rochem Ltd*.²⁴³

The engagement between a solicitor and client is simply a contract for services in return for remuneration. In the case at least of a retainer in respect of an uncomplicated action, such a contract is ordinarily entire; that is to say, the solicitor is, apart from agreement to the contrary, bound to do what is necessary to institute the litigation and to bring it to a conclusion before he becomes entitled to payment of his fees.

[6-180] For example, if a solicitor is retained to conduct a divorce, the retainer only ends when the divorce proceedings are concluded, which will include any issues relating to custody, disposal of property and financial provision.²⁴⁴ If the solicitor is retained by a purchaser to have property assigned into his name, the retainer ends when the property has been so assigned and the purchaser's title registered. If the solicitor is retained to conduct litigation, the retainer ends when the litigation has been concluded.²⁴⁵ These illustrations exemplify the operation of the 'entire contract' rule. Subject to any agreement to the contrary, the solicitor is obliged to represent his client until the entire contract has been carried out.²⁴⁶ If he withdraws

²⁴⁰ See, further, Chapter 7. There was a clear breach of this duty in *Eurasian Natural Resources Corp Ltd v Dechert LLP & Anor* [2022] EWHC 1138 (Comm).

²⁴¹ Principle 4.13, Solicitors' Guide.

²⁴² Commentary 1 of Principle 5.22, Solicitors' Guide states that a written retainer may be terminated in accordance with the terms of the retainer.

²⁴³ *Gamlen Chemical Co (UK) Ltd v Rochem Ltd* [1980] 1 All ER 1049, [1980] 1 WLR 614 (CA, Eng) at 624.

²⁴⁴ *Re Wingfield and Blew* [1904] 2 Ch 665, [1904-07] All ER Rep 667 (CA, Eng).

²⁴⁵ See *Lee Tsun Sum v David Wong Pui Hon* [2010] 5 HKC 363, [2010] 4 HKLRD 219 (CFI) and *Harris v Osbourn* (1834) 2 Cr & M 629, 149 ER 912.

²⁴⁶ See also *Underwood & Piper v Lewis* [1894] 2 QB 306, [1891-94] All ER Rep 1203 (CA, Eng), where the court held that, if a solicitor undertakes to conduct an action, he makes one entire contract, in the absence of any special agreement, to conduct the case to the end, and he cannot discharge himself so as to entitle himself to any costs except for good cause and on reasonable notice to the client. Justifying the entire contract rule Jessel MR said in *Re Hall & Barker* (1878) 9 Ch D 538 that, if

without good cause before the fulfilment of the retainer, the solicitor will not be entitled to his fees; nor may he demand part payment of his fees as a condition to continuing to represent the client.²⁴⁷ He may, however, be entitled to payment in respect of disbursements before the completion of his retainer.²⁴⁸

13.1.1 Ethics and the entire contract rule

[6-181] Commentary 2 of Principle 4.08, Solicitors' Guide, points out that: Without (an interim billing) agreement a solicitor cannot sue for his profit costs until the work which is the subject of the retainer is completed and a bill rendered, nor can he justifiably terminate his retainer if the client refuses to make such a payment.

13.1.2 Cases where the entire contract rule is inapplicable

[6-182] There are situations, however, in which the entire contract rule is inapplicable.

(a) Where the parties expressly agree that the retainer may be terminated earlier

[6-183] Clearly, the parties may expressly agree that the retainer may be terminated at an earlier date than the completion of the 'entire contract'.²⁴⁹

a shoemaker agrees to make a pair of shoes, he cannot deliver one to you and ask for half the price. The same principle applies to the solicitor agreeing to represent a client by performing a piece of work.

247 Per Goddard J in *Warmingtons v McMurray* [1936] 2 All ER 745 at 746.

248 Thus, in *Underwood & Piper v Lewis* [1894] 2 QB 306, [1891-94] All ER Rep 1203 (CA, Eng), Lord Esher MR said at 309, 'A solicitor cannot reasonably be expected to disburse out of his own pocket money which he may be unable to get back from his client or the other side, or which at any rate he may be kept out of for a long time. Therefore the courts have held ... that the solicitor is entitled, if he thinks right, to ask his client to find money for necessary disbursements; and, if the client fails to do so, the solicitor is entitled to say that he cannot act for the client further ... But it has been held that in such a case a solicitor cannot throw his client over at the last moment, which might be ruin to the client, and, even though the solicitor may have good cause for declining to act further for the client, he must give him reasonable notice of his intention to do so'. See also the discussion in Chapter 7.

249 Commentary 1 of Principle 5.22, Solicitors' Guide, states that a written retainer may be terminated in accordance with the terms of the retainer; see also paragraph [6-167]. This provision appears to set up an ethical standard higher than the legal standard. It requires that there be retainer in writing before the 'terms' of the express agreement may operate to terminate the retainer. A retainer in a non-contentious matter or in civil litigation matters is not required at law to be in writing to be effective, though obviously this is highly desirable (in civil matters a written retainer is ethically 'advisable': Commentary 8 of Principle 5.01, Solicitors' Guide). At law 'good cause' always can justify termination and surely it should be ethically valid for

(b) Where the nature of the business is such that it may be inferred that the 'entire contract' rule is inapplicable

[6-184] The 'entire contract' rule will not apply where the nature of the business, for which the solicitor is instructed, renders the application of the rule inapplicable. This may be the case, for example, where the business is lengthy and natural breaks in the business occur, or where to apply the entire contract rule would cause undue hardship to the solicitor. For example in *Re Romer & Haslam*,²⁵⁰ the court held that, where a solicitor is retained to conduct litigation, other than an ordinary action at common law, which may extend over a considerable period of time, and in which breaks may occur of such a kind as to be equivalent to the conclusion of a definite and distinct part of the proceedings, he may deliver to his client a bill of costs for business done up to the occurrence of any such breaks in the litigation and demand payment.

[6-185] A further illustration is provided by *Warmingtons v McMurray*,²⁵¹ where solicitors were employed generally to settle the client's affairs. They carried out a considerable amount of work including the institution of bankruptcy proceedings. The client, behind her solicitor's back, entered into a compromise agreement with the bankrupt to the effect that litigation would cease and the matter would be referred to arbitration. The solicitors refused to act further until they were paid their fees, but the client only offered to pay disbursements. Goddard J said:

This is not the simple case of a solicitor being retained simply to conduct an arbitration or action, and who happens to have been employed by the client on a previous occasion for which costs are still owing. The retainer of the solicitor came at a much earlier date than the beginning of the arbitration, and the employment was generally to get the client ... out of her difficulties ... The arbitration was in truth only one part of the work which the solicitor was employed to do. To employ a solicitor to conduct an action is one thing; to employ him to get you generally out of your difficulties, which may involve several actions ... is another. I think it would be altogether wrong to apply the doctrine of entire contract.

[6-186] The court concluded that the solicitor could cease to act for the client when he chose, provided he gave reasonable notice, and sue for the work which he had performed.

a solicitor to terminate a proven oral retainer which has an accompanying agreement to terminate in the event of some circumstance other than completion.

250 *Re Romer & Haslam* [1893] 2 QB 286 (CA, Eng).

251 *Warmingtons v McMurray* [1936] 2 All ER 745.

14. TERMINATION OF THE RETAINER

[6-187] The retainer might terminate automatically or might be terminated by the solicitor or client.

14.1 Automatic termination of retainer

[6-188] The retainer will cease automatically in the following situations.

14.1.1 Completion of the business in respect of which the retainer was given

[6-189] It will be a question of fact as to when the business is completed. As we have seen above, a retainer to conduct litigation may only be completed when the action has been concluded or when execution has been effected.

14.1.2 Mental incapacity of the client

[6-190] The mental incapacity of the client will terminate the retainer.²⁵² Physical incapacity, however, will not.²⁵³ As a matter of ethics the solicitor should, in the event of mental incapacity of the client, take reasonable steps to ensure that the 'client's' interests are protected and this might involve contacting his relatives or the Official Solicitor.²⁵⁴

14.1.3 Bankruptcy of the client

[6-191] The bankruptcy of the client will terminate the retainer, although the trustees in bankruptcy may, of course, retain the solicitor in their own right.²⁵⁵

14.1.4 Bankruptcy of the solicitor, the striking off of the solicitor or his suspension

[6-192] The bankruptcy of the solicitor or his being struck off the roll or suspended from practice will also terminate the retainer, since the practising certificate of the solicitor is automatically revoked.²⁵⁶ These events also constitute good grounds for the other party to litigation making application to the court for an order that the solicitor has ceased to act.²⁵⁷

²⁵² *Yonge v Toynbee* [1910] 1 KB 215 at 228, [1908-10] All ER Rep 204 (CA, Eng).

²⁵³ *Steel v Cobb* (1863) 1 New Rep 302.

²⁵⁴ Commentary 7 of Principle 5.22, Solicitors' Guide.

²⁵⁵ *Becke v Penn* (1835) 7 Car & P 397.

²⁵⁶ Section 6(7), Legal Practitioners Ordinance (Cap 159).

²⁵⁷ Order 67 rule 5(1), The Rules of the High Court (Cap 4A). The other party to the action may apply also on the additional grounds that the solicitor cannot be found, or has failed to take out a practising certificate.

14.1.5 Death of the client

[6-193] The client's death automatically terminates the retainer²⁵⁸ and the solicitor cannot recover costs in respect of future work, unless the personal representatives of the deceased client authorise the work to continue.²⁵⁹

14.1.6 Death of the solicitor

[6-194] The position is not clear as to whether the death of a particular solicitor terminates the retainer automatically. The position was discussed in *Underwood & Piper v Lewis*,²⁶⁰ but Lord Esher MR expressly left the issue undecided. One would imagine that, unless the client had expressly 'reserved' one particular solicitor to be his exclusive adviser, the death of a solicitor in a firm with more than one practising solicitor would not terminate any retainers which are, after all, retainers with the firm. Only in the case of a sole principal's death would all retainers be automatically determined.

14.1.7 Frustration

[6-195] A retainer may be terminated by operation of law where the purpose of the retainer has become frustrated. In *Ng Chun Kong Calvin, trading as Ko & Co v First Star Development Ltd*,²⁶¹ the plaintiff firm of solicitors had been retained by the defendant developer to carry out the conveyancing work in respect of a large number of flats in a development owned by the defendant. The basis for the sales was the Private Sector Participation Scheme (PSPS), but the PSPS was suspended by Government and the flats could not be sold on that basis. The defendant terminated the retainer and offered to pay for the plaintiff's services on a *quantum meruit* basis. The plaintiff sued for damages for breach. The learned judge concluded, after dismissing the plaintiff's various contentions, that the claim for damages should be dismissed as the retainer had been frustrated by the unexpected change in Government housing policy.²⁶²

14.2 Termination of retainer by the solicitor

[6-196] As we have seen at paragraph [6-167], the right of the solicitor to determine the retainer will depend upon whether the contract is governed by the entire contract rule.

²⁵⁸ *Whitehead v Lord* (1852) 7 Exch 691, 155 ER 1126. The action, however, survives: see Order 15 rule 7(1), The Rules of the High Court (Cap 4A).

²⁵⁹ *Re Bentinck* (1893) 37 Sol Jo 233.

²⁶⁰ *Underwood & Piper v Lewis* [1894] 2 QB 306 at 313, [1891-94] All ER Rep 1203 (CA, Eng).

²⁶¹ *Ng Chun Kong Calvin, trading as Ko & Co v First Star Development Ltd* [2011] HKCU 359 (unreported, HCA 2450/2004, 23 February 2011) (CFI).

²⁶² See also paragraph [6-201].