

CAYMAN ISLANDS



GUIDANCE NOTES

TO

**THE CAYMAN ISLANDS LEGAL SERVICES
CODE OF PROFESSIONAL CONDUCT, 2026**

GUIDANCE

Ref. Guidance to the Principles

GP.1 As officers of the Court, attorneys-at-law (and their employees) have a fundamental duty to uphold the rule of law and the proper administration of justice. An attorney-at-law or a recognised law entity shall comply with an obligation imposed on the attorney-at-law or recognised law entity under the Act or Regulations made under the Act.

GP.2 In following or considering a particular course of action, attorneys-at-law and their employees shall ensure that they comply with the Code of Conduct. Certain standards of behaviour are required of attorneys-at-law, both in their business activities and in their professional lives. Disgraceful conduct (including conviction of any criminal offence, other than a minor traffic offence) outside an attorney-at-law's practice may place him or her in breach of P.2.

If there is a conflict between the Principles, public interest will take precedence, especially the public interest in the administration of justice. Compliance with the Principles, as with all the Rules, is subject to any overriding legal obligations.

GP.3 Attorneys-at-law shall adopt high standards and act with honesty, propriety, integrity and professionalism at all times. They should treat others as they would like to be treated, e.g., by being civil and courteous.

GP.4 Subject to their overriding duty to the Court (but see R.2.3), attorneys-at-law shall act in the best interests of their clients.

GP.5 Attorneys-at-law shall maintain their independence at all times and not allow any other party to exercise undue influence when considering their actions. This not only relates to the independence of their advice but also the independence of their judgment.

GP.6 Attorneys-at-law shall ensure that they have sufficient knowledge and experience (or access to the requisite knowledge and experience) for the provision of appropriate legal advice in all matters for which they are engaged.

GP.7 Attorneys-at-law shall safeguard client money and assets by ensuring that there are proper systems and controls and that effective training is provided to all attorneys-at-law and other appropriate employees in a recognised law entity.

GP.8 It is not possible to cover every ethical problem or issue which may arise in the course of legal practice, but the Principles will guide the ethical thinking of attorneys-at-law and their employees in determining how to deal with a particular problem or issue.

Attorneys-at-law shall manage their recognised law entities effectively and implement robust systems and controls, which are properly understood by attorneys-at-law and their employees.

GP.9 Disciplinary action may be taken by the Disciplinary Tribunal in relation to breaches of the Code of Conduct, whether it relates to a breach of one or more Principles or Rules.

The relationship between attorneys-at-law (and their employees) and the Council shall be open and transparent so that appropriate action can be taken to protect the public and assist attorneys-at-law and their employees when there are difficulties.

GP.10 The Principles provide the ethical infrastructure from which the Rules flow. Attorneys-at-law shall reasonably ensure that, in the course of their professional duties and/or the provision of legal services, everyone in their recognised law entities follows these fundamental Principles, regardless of whether they are client facing and/or legally qualified.

Ref. Guidance to Rule 1

G.1 Application - Guidance

- G.1.1 The Principles and Rules apply to all attorneys-at-law and their recognised law entities, whether they are practising in the Cayman Islands or elsewhere.
- G.1.2 If the attorney-at-law is practising in another jurisdiction, and subject to the legal practice regulatory regime in that jurisdiction, the attorney-at-law shall comply with the rules of that jurisdiction, when the attorney-at-law is carrying out an activity regulated by that jurisdiction's regulator. An attorney-at-law should be clear whose regulatory jurisdiction their work or practice falls into. An attorney-at-law may be subject at the same time to differing regulatory regimes. In the unlikely event of a conflict of regulatory requirements, the attorney-at-law should apply for a waiver of this Code.
- G.1.3 It shall be made clear to the client, to whom, and in which jurisdiction, they can complain.
- G.1.4 Certain Principles and Rules also apply outside practice as follows:
- (a) under P.2, recognised law entities, attorneys-at-law and their employees shall not behave in a way which brings or which may bring the profession or the provision of legal services into disrepute. P.2 applies to the conduct of attorneys-at-law and their employees, both in relation to their professional practice and outside it, since an officer of the Court or an employee of an officer of the Court shall not behave inappropriately;
 - (b) under R.11.2 (Not taking unfair advantage), recognised law entities, attorneys-at-law and their employees shall not take unfair advantage of their position, whether this is in relation to their professional practice or outside it.

Ref. Guidance to Rule 2

G.2 Duty to the Court - Guidance

G.2.1 Knowingly misleading the Court includes the situation where, having inadvertently misled the Court, an attorney-at-law later realises that he or she has misled the Court, and fails to correct the position. Recklessness means being indifferent to the truth, or not caring whether something is true or false.

G.2.2 Attorneys-at-law shall take reasonable steps to ensure that the Court has before it all relevant decisions and statutory provisions, which includes drawing to the attention of the Court any decision or provision which may be adverse to the interests of their client. This is particularly important where an attorney-at-law is appearing against a litigant who is not legally represented.

G.2.3 R.2.2 makes it clear that an attorney-at-law's duty to act in the best interests of his or her client is subordinate to his or her duty to the Court, but subject to R.2.3. For example, if a client were to tell an attorney-at-law that the client had committed the crime with which the client was charged, in order to be able to ensure compliance with R.2.1 to R.2.4:

- (a) the attorney-at-law would not be entitled to disclose that information to the Court without his or her client's consent; and
- (b) the attorney-at-law would not be misleading the Court if, after his or her client had entered a plea of 'not guilty', the attorney-at-law were to test in cross-examination the reliability of the evidence of the prosecution witnesses and then address the jury to the effect that the prosecution had not succeeded in making them sure of his or her client's guilt.

However, the attorney-at-law would be misleading the Court and would therefore be in breach of R.2.1 and R.2.4 if the attorney-at-law were to set up a positive case inconsistent with the confession, as for example by:

- (a) suggesting to prosecution witnesses, calling his or her client or the witnesses to show, or submitting to the jury, that his or her client did not commit the crime;
- (b) suggesting that someone else had done so; or
- (c) putting forward an alibi.

If there is a risk that the Court will be misled unless an attorney-at-law discloses confidential information which the attorney-at-law has learned in the course of his or her instructions, the attorney-at-law should ask the client for permission to disclose it to the Court. If the client refuses to allow the attorney-at-law to make the disclosure the attorney-at-law shall cease to act, and shall return his or her instructions. In these circumstances, the attorney-at-law shall not reveal the information to the Court.

Similarly, if an attorney-at-law becomes aware that his or her client has a document which should be disclosed but has not been disclosed, the attorney-at-law cannot continue to act unless the client agrees to the disclosure of the

document. In these circumstances, the attorney-at-law shall not reveal the existence or contents of the document to the Court.

- G.2.4 Attorneys-at-law shall not discuss the merits of a case with a magistrate or judge before whom a case is pending or by whom it may be heard unless invited to do so in the presence of the attorney-at-law for the other side.
- G.2.5 An attorney-at-law's duty to the Court does not permit or require the attorney-at-law to disclose confidential information which the attorney-at-law has obtained in the course of his or her instructions and which his or her client has not authorised the attorney-at-law to disclose to the Court. However, R.2.4 requires an attorney-at-law not knowingly to mislead the Court or to permit the Court to be misled.
- G.2.6 Attorneys-at-law are obliged by P.4 to promote and to protect each of their client's interests so far as that is consistent with the law and with their overriding duty to the Court under P.1. Their duty to the Court does not prevent them from putting forward their client's case simply because they do not believe that the facts are as their client states them to be (or as they, on their client's behalf, state them to be), as against knowing their client's case to be false, as long as any positive case put forward accords with their instructions and the attorney-at-law does not mislead the Court. The attorney-at-law's role when acting as an advocate or conducting litigation is to present his or her client's case, and it is not for the attorney-at-law to decide whether his or her client's case is to be believed.

For example, an attorney-at-law is entitled, and it may often be appropriate, to draw to the witness's attention other evidence which appears to conflict with what the witness is saying and the attorney-at-law is entitled to indicate that a court may find a particular piece of evidence difficult to accept. But if the witness maintains that the evidence is true, it should be recorded in the witness statement and the attorney-at-law will not be misleading the Court if the attorney-at-law calls the witness to confirm their witness statement. Equally, there may be circumstances where an attorney-at-law calls a hostile witness whose evidence the attorney-at-law is instructed is untrue. An attorney-at-law will not be in breach of R.2.4 if the attorney-at-law makes the position clear to the Court.

- G.2.7 Where a client admits to having committed perjury or having misled the Court in any material matter relating to ongoing proceedings, the attorney-at-law shall not act further in those proceedings unless the client agrees to correct the position.
- G.2.8 Reasonable expenses, and reasonable compensation for loss of time attending Court, may be paid to witnesses.

Ref. Guidance to Rule 3

G.3 Honesty, integrity and independence - Guidance

- G.3.1 An attorney-at-law's honesty, integrity and independence are fundamental. The interests of justice (P.1) and the client's best interests (P.4) can only be properly served, and any conflicts between the two properly resolved, if an attorney-at-law conducts himself or herself honestly (P.3) and maintains his or her independence from external pressures (P.5).
- G.3.2 Other Rules deal with specific aspects of the attorney-at-law's obligation to act in his or her client's best interests (P.4) while maintaining honesty and integrity (P.3) and independence (P.5).
- G.3.3 R.3.1 addresses how an attorney-at-law's conduct is perceived by the public. An attorney-at-law would be in breach of P.2 and R.3.1 if his or her conduct may be reasonably perceived as undermining his or her honesty, integrity or independence or is likely to diminish the trust and confidence which the public places in him or her or in the legal profession.
- G.3.4 Examples of how attorneys-at-law may be seen as compromising their independence.

The following may reasonably be seen as compromising an attorney-at-law's independence in breach of R.3

- (a) offering, promising or giving: a gift (apart from items of modest value), to any client, professional client or other intermediary;
- (b) lending money to any such client, professional client or other intermediary; or
- (c) accepting any money (whether as a loan or otherwise) from any client, professional client or other intermediary, unless it is a payment for the attorney-at-law's professional services or reimbursement of expenses or of disbursements made on behalf of the client.

If an attorney-at-law is offered a gift by a current, prospective or former client, professional client or other intermediary, the attorney-at-law should consider carefully whether the circumstances and size of the gift would reasonably lead others to think that the attorney-at-law's independence had been compromised. If this would be the case, the gift should be refused.

The giving or receiving of entertainment at a disproportionate level may also give rise to a similar issue and so should not be offered or accepted if it would reasonably lead others to think that the attorney-at-law's independence had been compromised.

Ref. Guidance to Rule 4

G.4 Client relations - Guidance

- G.4.1 Generally, attorneys-at-law should consider carefully whether it would be in the interests of the client and in the interests of the recognised law entity to accept instructions.
- G.4.2 Attorneys-at-law are free to decide whether to take on a client, subject to R.4.1(a).
- G.4.3 In determining whether to act, attorneys-at-law shall consider whether they have the knowledge, qualifications, expertise, time, and, where relevant, support staff and access to external expertise to advise or represent the client properly.
- G.4.4 Rule 4.1(c) sets out a range of circumstances in which instructions shall be refused. An attorney-at-law or a recognised law entity shall not act if they would be in breach of the law or of the Rules: examples are where money laundering is suspected or there is a conflict of interest (unless it is a conflict where, if certain conditions are satisfied, it is possible to act, and those conditions are satisfied), or where an attorney-at-law is dealing with a potential client who is unable to instruct an attorney-at-law or the recognised law entity due to a lack of mental capacity. References to 'vulnerable' or 'vulnerability' in the Rules and this Guidance refer to individuals who lack mental capacity, and include minors.
- G.4.5 Attorneys-at-law shall be satisfied that the client is giving the instructions without duress or undue influence. There may be occasions when the attorney-at-law suspects that a client's instructions are the result of undue influence, in which case the attorney-at-law or employee will need to exercise his or her judgment as to whether they can proceed on the client's behalf; see G.4.6.
- G.4.6 If an attorney-at-law suspects that a friend or relative or anyone else is exerting duress or undue influence, it would be prudent to see the client alone or with an independent third party or interpreter. If the client appears to want to act against what one would expect their best interests to be, the attorney-at-law should explain the consequences of the instructions and get confirmation in writing, that refers to the explanation given, that the client wishes to proceed – but this will not negate duress or undue influence if it exists.
- G.4.7 If an attorney-at-law or recognised law entity would be professionally embarrassed by acting, even if there were no actual legal conflict, instructions may be refused. An example would be where, by accepting instructions to act against a former client (where no duties of confidentiality prevented the attorney-at-law or recognised law entity so acting), the attorney-at-law felt inhibited from doing his or her best for the new client.
- G.4.8 If professional embarrassment is not a factor and there is no prohibition or impediment under the Rules from acting, whether by reason of conflict or otherwise, it will be a purely commercial decision whether to act against the interests of another client or former client.

- G.4.9 Attorneys-at-law should not act for a client who has instructed another attorney-at-law or recognised law entity in the same matter, without the agreement of that other attorney-at-law or recognised law entity. But a second opinion can be provided if the attorney-at-law has sufficient information and clarity of instructions to be able to provide proper advice.
- G.4.10 The client should be provided with an explanation of the relationship of the attorney-at-law to the client including the duty of confidentiality, the need for the utmost good faith between attorney-at-law and client and the duty of the attorney-at-law to exercise reasonable skill and care. This is part of what is to be covered by the terms of business/letter or terms of engagement. The expression '*client care information*' used in this Guidance includes the points referred to in this paragraph, and typically all client care information will be set out in terms of business or a letter or terms of engagement.
- G.4.11 It is important that the client and the attorney-at-law have a clear mutual understanding of what work is going to be undertaken (including any limitations as to scope), the timescales and the level of service and, if such reports are appropriate or required, the frequency of progress reports, as this will minimise the risk of misunderstanding, complaints or claims. Poor communication is a major source of complaints and can result in increased costs.
- G.4.12 Treating the client fairly does not necessarily mean that the client will be satisfied but ensuring that the client has all the necessary information, that there is good communication and clarity about costs, and updates to these and desired outcomes, should mean that even if the client is dissatisfied at the outcome, the client does not complain or make a claim, because the client has been treated fairly.
- G.4.13 Clients shall be told of the name and, if appropriate, the status and qualifications of the person(s) responsible for the day to day work and the overall supervision of the matter. Failure to tell the client the status of the person(s) with such responsibilities can result in misunderstandings as to whether the person is legally qualified or not, the proper level of responsibility borne by that person, and how appropriate it is to have different persons in the recognised law entity engaged on the matter with different responsibilities.
- G.4.14 If the person dealing with the matter leaves the recognised law entity, the client shall be told as soon as possible and informed who will take over the matter, their status and any impact on cost for the client. Clients shall be informed of material changes to the composition of the recognised law entity which will affect that client.
- G.4.15 An attorney-at-law and a client can agree either that certain information (of the information otherwise required under this Code) is not required or, once the terms of engagement are in place, to vary the contractual arrangements between the recognised law entity and the client, provided that the client understands the consequences and the agreed variation is in writing or evidenced in writing.
- G.4.16 Existing clients, for whom a new matter is undertaken, shall be provided with information about any changes in the client care information. A client may agree with the attorney-at-law or employee that new terms of engagement are not

required for every new instruction but the attorney-at-law shall ensure that the client is provided with sufficient client care information on each instruction.

- G.4.17 If instructions are received from someone other than the client, the client shall be given or also be given the relevant client care information although there may be exceptions to this particularly in relation to attorneys-at-law or persons lacking mental capacity. Such client care information can be given to the client via a reputable intermediary (as the case may be a professional client or other person giving the instructions).
- G.4.18 Accurate information about costs enables the client to budget and reach informed decisions as to what the client can afford, before making commitments. As the matter proceeds, providing the client with up-to-date costs information reduces the risk of complaints.
- G.4.20 The basis on which fees and expenses are to be charged shall be explained to the client, i.e. (in the case of fees) whether the fees are an estimate or set/fixed fees, or hourly rates. The client shall be advised of any factors or circumstances which may affect the level of fees and expenses such as the complexity and novelty of the matter, the specialised legal knowledge required, the monetary amount or other value of the matter, the number and length of documents, the urgency of the matter and the place and time of day when the work is to be carried out, the importance of the matter to the client and the time to be expended.
- G.4.21 It may not be possible to tell at the outset what the overall costs will be but the attorney-at-law needs to provide the client, after careful consideration, with a reasonable indication of likely fees and disbursements, both at the outset and as a matter progresses, including risks as to the responsibility for other costs, unless otherwise agreed with the client. If it is not possible to give a precise figure at the outset, the reason should be explained to the client. An agreement should be reached, in such circumstances, with the client as to how the client will be updated as to current and future costs. The attorney-at-law shall tell clients when pre-agreed limits or caps on legal costs are reached or are likely to be inadequate and agree revised limits or alternative strategies.
- G.4.22 Clients shall also be told the terms of payment and the time for payment, the rate of interest (if any) chargeable on late payment, the frequency of billing, and of their right at any time to be informed, on request, of the fees incurred to date.
- G.4.23 Depending on the nature of the instruction, it may be necessary to provide additional costs/fees information, for example, ensuring that clients understand the cost implications of any offers of settlement, including details of the costs to be deducted and how the figures are calculated.
- G.4.24 The client shall be advised of the liability for costs in contentious matters including a clear statement of the principles of the extent of recovery of costs awarded against an opposite party and a clear statement of the likely difference between the level of costs recoverable on an award of costs against such a party and the level of costs which the attorney-at-law will charge to the client.

- G.4.25 If any financial benefit (other than legal fees payable by or on behalf of the client) is received during the course of or as a result of acting for the client, then the client shall be informed about the benefit and how it will be dealt with. As a fiduciary, the attorney-at-law (or their recognised law entity) is not permitted to make a secret profit.
- G.4.26 The clients' right to complain is an important public protection so it is important that they know about their right and how to complain. Clients shall be confident that if they have a complaint, it will be dealt with promptly, fairly and effectively. They shall be told to whom the complaint should be addressed, about the dispute provisions referred to in R.4.5 and of the existence of the right of a client to refer a matter to the Council in the event that the client's complaint cannot be resolved satisfactorily through the recognised law entity's complaints procedures.
- G.4.27 The complaints procedure shall be set out in writing (normally in the terms of engagement). The procedure should be clear and easy for clients to use, allowing complaints to be made by any reasonable means, i.e. not necessarily in writing. (This will allow complaints to be made by clients who are vulnerable or who have a disability.)
- G.4.28 Complaints shall be dealt with effectively, which requires decisions to be based on a proper investigation of the circumstances leading to the complaint, and promptly. If a complaint is justified, an appropriate remedy or redress shall then be offered, where appropriate. It is important that everyone in the recognised law entity, or at least those dealing with clients, understands the recognised law entity's procedure and the importance of good complaints handling.
- G.4.29 Clients shall be advised about what will happen on the termination of a retainer, including details of the file closure procedures and of where documents will be held and the date on which the file will be destroyed.
- G.4.30 On the termination of a retainer, an attorney-at-law shall account to the client for any money still held on behalf of the client and, if so requested, deliver to the client all papers or property to which the client is entitled, or otherwise held to the client's order. The handing over of documents (which means letters, faxes, emails and other documents whether hand written, printed or stored electronically) on the termination of a retainer shall be in accordance with the provisions of the Annex.
- G.4.31 Notwithstanding the provisions in G.4.29 to G.4.30 (including the guidance on ownership of documents at the Annex), all files or records of any material matter shall be retained by an attorney-at-law or a recognised law entity in either physical form or, if not reasonably affecting the status or value of the document concerned, electronically, for at least 7 years from the last material entry on the file/record and shall not then be destroyed unless it is reasonable to do so in the circumstances. In any event, an attorney-at-law or a recognised law entity may destroy files and records, other than original documents or items of intrinsic value or currency (e.g., wills, promissory notes) after 20 years from their date or the last material entry, whichever is the later, whether the attorney-at-law or recognised law entity has the consent of the client or not.

G.4.32 An attorney-at-law or a recognised law entity is not obliged to maintain the hardware of the computer system upon which such files or records or other documents or items may be stored for this 20-year period.

Ref. Guidance to Rule 5

G.5 Confidentiality – Guidance

- G.5.1 R.5.1 sets out the fundamental duty to keep all clients' affairs confidential, which applies to everyone in the recognised law entity. The duty applies to all information held about a client and its affairs that is not in the public domain, regardless of the source of the information. There are some limited exceptions to the duty as explained below.

- G.5.2 All employees shall be trained or instructed on the fundamental duty of confidentiality as well as on the recognised law entity's policies and procedures in this area. It needs to be made clear that failing to keep clients' affairs confidential can result in disciplinary action, not only by the recognised law entity but also by the Council.

- G.5.3 There is a difference between the duty of confidentiality and the concept of legal privilege. Legal privilege protects certain communications with a client from being disclosed even in Court. However, not all communications, in particular those with third parties, are protected from such disclosure and reference should be made to the appropriate authority on the law of evidence.

- G.5.4 Attorneys-at-law need to have robust systems and controls in place to ensure that client information is kept confidential (and also to comply with the data protection legislation), and need to identify if there are risks to client confidentiality and how those risks will be managed. Such systems and controls will need to take account of the impact of technology, the risks associated with social media and data security challenges.

- G.5.5 Systems and controls to identify and forestall the particular risks associated with partners and staff leaving one recognised law entity and joining another will also be required. An individual joining a new recognised law entity could not act personally for the client of the new recognised law entity if he or she holds or maintains knowledge of relevant confidential information about a relevant client of the former recognised law entity.

- G.5.6 The duty of confidentiality continues after the end of the retainer and the right to confidentiality passes to the personal representatives on the death of a client.

- G.5.7 Recognised law entities shall always consider whether a particular course of action will result in a breach of confidentiality, for example, sharing office services with other businesses, selling book debts to a factoring company or outsourcing services.

- G.5.8 Information received in relation to a prospective client may still be confidential even if that prospective client does not instruct the attorney-at-law. In addition, the receipt of that information may subsequently prevent the recognised law entity from acting for another party.

- G.5.9 The duty of confidentiality may be overridden by law or regulation or by a court order. Any disclosure made in accordance with a statutory authority or Court order shall be strictly limited to what is required by law. If requested by a government or other body or the police to provide information, the attorney-at-law or employee should:
- (a) ask under which statutory power the information is sought;
 - (b) ask whether the client's consent can be sought;
 - (c) consider the relevant provisions; and
 - (d) assess whether privileged information is protected from disclosure.
- G.5.10 Where there are circumstances in which the attorney-at-law, employee or recognised law entity has strong prima facie evidence that they have been or are being used by the client for an unlawful purpose, the duty of confidentiality may fall away. If an attorney-at-law, employee or recognised law entity is unsure whether that is the case, it may be necessary to obtain specialist legal advice.
- G.5.11 The money laundering legislation overrides the duty of confidentiality in certain circumstances. When deciding whether a report needs to be made to the relevant authorities, the recognised law entity's money laundering reporting officer (MLRO) will consider the law, the extent to which confidentiality is overridden and whether there is information which is subject to legal privilege. It may be necessary to obtain specialist legal advice.
- G.5.12 If a client becomes insolvent, the recognised law entity will need to determine to whom the duty of confidentiality is owed. Reference should be made to the relevant legislation to assess whether the statutory power to require disclosure overrides confidentiality and, if so, to what extent. Any disclosure made shall be strictly limited to what is required by the law.
- G.5.13 Confidential information may be disclosed to the recognised law entity's insurer to deal with a negligence claim or to the Council where an attorney-at-law, employee or the recognised law entity's conduct is under investigation.
- G.5.14 Under R.5.2, there is a duty to disclose to the client all information material to the client's matter. That duty is limited to information of which the attorney-at-law is aware but is not limited to information obtained while acting on the client's matter. It is however subject to the qualifications set out in that Rule.
- G.5.15 "Information which is material to the client's matter" is not defined but shall be information which is relevant to the particular retainer and shall be information which might reasonably be expected to affect the client's decision making in relation to the retainer in a significant way. There may be circumstances in which the client instructs the attorney-at-law, employee or the recognised law entity because of their specialist knowledge and agrees that the usual duty to disclose information about other clients (such duty being albeit always subject to the R.2.2

- qualifications and G.5.17) would not apply. The duty to disclose information about other clients necessarily does not apply in circumstances under R. 7.3.
- G.5.16 If, during the course of a matter, an attorney-at-law receives information or documents from either a client or a third party, which clearly appear to have been (a) disclosed inadvertently; or (b) obtained improperly, the attorney-at-law shall return such information or documents to the rightful owner without use being made of the information or documents.
- G.5.17 Where it is not clearly apparent that the information or document has been mistakenly disclosed but it appears that this may be the case, the attorney-at-law (or his or her recognised law entity) must inform his or her opponent of the attorney-at-law's intention to use the document and the circumstances (so far as are known) in which the information or document has been obtained. If the opponent objects to the use of such information or document, reference to the Court may be necessary.
- G. 5.18 Where there is a conflict between the duty of confidentiality and the duty of disclosure, it will normally be necessary to stop acting or to refuse instructions. This reflects the fiduciary duty of loyalty which exists at common law.
- G.5.19 An attorney-at-law (or his or her recognised law entity) should consider carefully whether the attorney-at-law (or his or her recognised law entity) can act for the adversary of a former client. Firstly, an assessment shall be made whether any confidential information, which is relevant to the dispute, is held by the attorney-at-law or the recognised law entity. Secondly, the attorney-at-law or the recognised law entity should assess whether it would be professionally embarrassing to act for the adversary. The reputational damage of acting against a former client may outweigh the benefits of acting for the adversary.

Ref. Guidance to Rule 6

G.6 Acting in the best interests of each client - Guidance

G.6.1 R.6.1 and R.6.2 are expressed in terms of the best interests of each client. This is because an attorney-at-law may only accept instructions to act for more than one client if he or she is able to act in the best interests of each client, as P.4 requires of the attorney-at-law, as if that client were his or her only client. See R.1 on the circumstances when attorneys-at-law are obliged to advise their client to seek other legal representation and R.7 on conflicts of interest, and the guidance to those Rules.

G.6.2 P.6 requires not only that an attorney-at-law provide a competent standard of work but also a competent standard of service to his or her clients. R.1 and R.6 are not exhaustive of what an attorney-at-law shall do to ensure his or her compliance with P.4 and P.6. By way of example, a competent standard of work and of service includes:

- (a) treating each client with courtesy and consideration;
- (b) seeking to advise each client, in terms the client can understand;
- (c) taking all reasonable steps to avoid incurring unnecessary expense; and
- (d) reading the attorney-at-law's instructions promptly.

This latter obligation may be particularly important if there is a time limit or limitation period. If an attorney-at-law fails to read his or her instructions promptly, it is possible that the attorney-at-law will not be aware of the time limit until it is too late.

G.6.3 In order to be able to provide a competent standard of work, attorneys-at-law should keep their professional knowledge and skills up to date, and regularly take part in professional development and educational activities that maintain and further develop their competence and performance.

G.6.4 Attorneys-at-law should remember that their client may not be familiar with legal proceedings and may find them difficult and stressful. They should do what they reasonably can to ensure that the client understands the process and what to expect from it and from the attorney-at-law. Attorneys-at-law should also try to avoid any unnecessary distress for their client. This is particularly important where attorneys-at-law are dealing with a vulnerable client.

G.6.5 The duty of confidentiality is central to the administration of justice. Clients who put their confidence in their legal advisers must be able to do so in the knowledge that the information they give, or which is given on their behalf, will stay confidential. Typically, such information is likely to be privileged and not disclosed to a court.

G.6.6 R.2.1 acknowledges that an attorney-at-law's duty of confidentiality is subject to an exception if (amongst other things) disclosure is required or permitted by law.

In other circumstances, an attorney-at-law may only make disclosure of confidential information where it is in the recognised law entity's own interests to do so or where their client gives informed written consent to the disclosure.

G.6.7 There may be circumstances when an attorney-at-law's duty of confidentiality to his or her client conflicts with his or her duty to the Court. (See also G.2.5.)

G.6.8 Similarly, there may be circumstances when an attorney-at-law's duty of confidentiality to his or her client conflicts with his or her duty to his or her regulator.

Ref. Guidance to Rule 7

G.7 Conflicts of interest - Guidance

- G.7.1 If there is a conflict of interest or a significant risk of conflict, in the same or a related matter, either between the duty to act in the best interests of two or more clients or between the interests of an attorney-at-law (or the attorney-at-law's recognised law entity) and a client, then – as a general and not absolute statement – the client's best interests cannot be served, which would be a breach of P.4. Qualified as a general statement, given what underlies the exception at R.7.3, clients can choose to waive the general Rule, and there can be important commercial advantage (practicality, convenience, cost, expeditious mutual understanding) in having the same recognised law entity (albeit in different persons) act for both or more interests.
- G.7.2 Identifying conflicts of interest is a major challenge for attorneys-at-law and it is critical for recognised law entities to have effective systems and controls to identify and manage and avoid conflicts of interest, or achieve clients' consent as referred to in R.7.3. A system will not be effective if insufficient relevant information is obtained from the client, e.g., about adverse or potentially adverse parties, other names (e.g., maiden or marital) and associated or related persons, including other advisers. The systems and controls shall be set up to ascertain commercial as well as legal conflicts. A recognised law entity shall also be alert, in considering whether it can take on instructions, to the conflicts of interest provisions of panel terms or equivalent, typically of financial institutions, by which they may be bound.
- G.7.3 Attorneys-at-law and employees shall be properly trained on what a conflict of interest is, what information to seek from potential clients and how to manage and avoid conflict of interest situations.
- G.7.4 The definition of conflict in R.7.2 requires an assessment as to whether two matters are "related". A related matter will always include any other matter which involves the same asset or liability or transaction. If the asset or liability or transaction is not the same, then there will need to be some reasonable degree of relationship of the clients' respective interests for a conflict to arise.
- G.7.5 Attorneys-at-law and recognised law entities will need to make a judgement on the facts and, in doing so, should take into account the view of the existing client, if obligations of confidentiality to the prospective client allow the matter to be raised with the existing client. Consideration will also need to be given as to whether any relevant confidential information relating to the existing client is held and if so, whether R.5 can be complied with if the new client is taken on.
- G.7.6 In considering whether there is a conflict of interest or whether it is appropriate to seek consent to act from all clients under R.7.3, an attorney-at-law shall take into account the obligation to act in the best interests of each client, the duty owed to each individual client and the extent to which such duty continues in respect of a former client following termination of the retainer.

G.7.7 R.7.3 only applies to non-contentious matters, and there shall be informed written consent (which is freely given). This means that the attorney-at-law or recognised law entity shall be satisfied that the clients understand the implications of the consent, or that the advantages to the clients of the recognised law entity acting for more than one client outweigh possible conflicts of interest or duty. If there is a risk that the parties do not fully understand the implications, or that the advantages do not outweigh possible conflicts, or any of the parties are vulnerable or subject to undue influence, it is likely to be prudent to ensure that they are separately represented. Without prejudice to the application of R.7.4 in the circumstances where it applies, it is a good practice, when entering into arrangements to act for two or more clients in the same matter or related matters, for the recognised law entity to agree with the clients which of the clients the recognised law entity will act for if the relations between the clients become contentious. See G.7.10.

G.7.8 In accepting instructions in a R.7.3 situation, the attorney-at-law or recognised law entity shall be satisfied that they can act even-handedly for both or all clients, so that one client is not favoured at the expense of the other and that unfettered advice can be given which is in the best interests of each client in accordance with P.4. The question of whether it remains reasonable to continue to act for both clients shall be kept under review.

G.7.9 Where it is decided to act under R.7.3, it would be prudent to set out the issues relating to conflict in the terms of business letter, or otherwise in writing, including how a conflict might affect the clients as the matter progresses. Written records of discussions with clients about the implications of acting for them as well as other(s) on the same matter or related matters, including that the recognised law entity may have to cease acting for one or more of the clients, should always be retained for the avoidance of doubt and for evidential reasons.

G.7.10 There may be circumstances where, when acting for two or more clients on a matter or related matters, it will be necessary to cease acting for one or more clients. There may not have been any indication of conflict at the outset but subsequently either a conflict or significant risk of conflict arises.

In such circumstances, if it is not possible or appropriate to achieve consent from the clients under R.7.3 or otherwise, the disruption to the clients should be limited as far as reasonably possible. Care should be taken to ensure that there is no breach of confidentiality.

G.7.11 An own interest conflict is not restricted to economic issues, for example, there may be circumstances in which there is a personal relationship which impairs the ability to act in the best interests of the client. The fiduciary relationship with the client prevents an attorney-at-law or a recognised law entity from taking advantage of the client (the 'no profit' rule) or acting where there is a conflict or potential conflict of interest with the client (the 'no conflict' rule).

- G.7.12 Where an attorney-at-law or a recognised law entity is in doubt whether there is an own interest conflict, particularly where there is likely to be a perception that there is an own interest conflict, the attorney-at-law or recognised law entity should err on the side of caution and either insist that the client obtain independent legal advice or stop acting.
- G.7.13 The public offices and appointments covered by R.7.8 include members of Parliament, judicial appointments and similar appointments which could give rise to a perception of conflict or unfair advantage.
- G.7.14 When assessing whether there is any conflict or significant risk of conflict under R.7.8, the following issues should be considered:
- (a) Is there any political or other interest in or arising from the office or appointment that may conflict with or affect the duty to act in the best interests of clients (including the ability to advise impartially and independently)?
 - (b) Are there any duties which arise from the office or appointment that may conflict with or affect the duty to act in the best interests of clients (including the ability to advise impartially and independently)?
 - (c) Do the terms of the appointment or any statutory provisions restrict the ability of the individual to act in any particular matter or for any class of potential clients? and
 - (d) Is there likely to be a public perception that the individual or the recognised law entity has been or will or may be able to obtain an unfair advantage for clients as a result of the office or appointment?
- G.7.15 Attorneys-at-law shall ensure that all employees of their recognised law entity understand and comply with the provisions of R.7.9.
- G.7.16 R.7.10 provides that an attorney-at-law shall not stand bail for a client (except with the consent of the Council) as standing bail for a client is likely to create a conflict of interest. At all times, attorneys-at-law (and employees) shall maintain their independence as officers of the Court.

Ref. Guidance to Rule 8

G.8 Business Management – Guidance

- G.8.1 Attorneys-at-law shall manage their business in compliance with all the Principles, including the overriding duty to the Court. The culture of the recognised law entity comes from the principal or partners, and attorneys-at-law shall ensure that they (and their employees) uphold the rule of law and proper administration of justice by acting ethically at all times.
- G.8.2 To manage their business effectively and efficiently, recognised law entities shall have clear governance and a management structure with defined reporting lines and clarity over supervision responsibilities so every individual at a recognised law entity knows where to go for help or to report or raise a problem.
- G.8.3 A well-run business will identify and manage risk effectively. Having identified the risks for the recognised law entity, the recognised law entity will implement robust systems and controls to manage and mitigate those risks, which should include periodic reviews. The main types of risk are:
- (a) strategic, for example, external factors (economic, political, legal changes, competition), internal factors (reliance on one area of work, merger risks, badly managed teams, loss of key partners or employees);
 - (b) financial, for example, lack of income, loss of client money, credit risks, poor financial hygiene (lack of regular billing, excessive write offs, poor budgetary controls);
 - (c) operational, for example, lack of IT and physical security, IT systems failures, damage to offices;
 - (d) regulatory, for example, breaches of the Code or Rules, negligence claims, complaints, Customer Due Diligence /Know Your Customer (CDD/KYC), money laundering and data protection risks.
- G.8.4 A recognised law entity's systems and controls to mitigate the risks identified will cover at least the following:
- (a) client care, costs information and complaints handling including compliance with R.4;
 - (b) confidentiality of client information;
 - (c) a systematic approach to identifying and avoiding conflicts of interests;
 - (d) the exercise of appropriate supervision over all employees and proper supervision of clients' matters;
 - (e) the training of individuals working in the recognised law entity to maintain a level of competence appropriate to their work and level of responsibility;
 - (f) supervision of less senior or experienced staff;
 - (g) compliance with the key regulatory requirements of the Council, including professional indemnity cover, Accounts, Rules/delivery of accountants' reports and obligations to co-operate with and report information to the Council;

- (h) compliance with all legal and other regulatory requirements;
 - (i) the giving and control of undertakings;
 - (j) the identification and safekeeping of documents and assets entrusted to the recognised law entity, including client money, wills and investments;
 - (k) the continuation of the recognised law entity in the event of absences and emergencies, with the minimum interruption to clients' business; and
 - (l) the management of risk (in accordance with G.8.3).
- G.8.5 R.8.2 (c) states the need to maintain appropriate records including good file management, as this is essential to an ethical and competent practice. This includes keeping appropriate notes and records of communication which will have the added effect of protecting employees and the recognised law entity in the event of a complaint or claim. Good practice includes:
- (a) a clear and risk-avoiding policy relating to records and file management;
 - (b) clear file opening procedures that ensure all necessary information is obtained and recorded and communicated as is requisite;
 - (c) robust filing systems;
 - (d) prudent file review procedures including a system for diarising reviews;
 - (e) file closing procedures that check material risks (e.g., prescription periods, any outstanding CDD);
 - (f) a clear and prudent policy for archiving, retention and destruction of files; and
 - (g) clear backup systems, both paper and electronic, including disaster recovery procedures.
- G.8.6 Attorneys-at-law and their recognised law entities need to ensure that employees are properly trained or informed about the systems and controls and provided with easy access to the policies and procedures. Regular reminders of the importance of compliance will help to ensure that employees understand their obligations and comply with the requirements of R.8.
- G.8.7 There are two key elements to R.8.4; firstly, the obligation to protect client money and assets and secondly, the obligation to ensure that the recognised law entity remains financially viable by ensuring there is financial control of budgets, expenditure, work in progress, invoicing and cashflow.
- G.8.8 The impact of the failure of a recognised law entity is significant not only for clients who are directly affected but also for the reputation of the profession. Well-run recognised law entities tend to employ an experienced and capable financial manager or similar individual with strong financial skills.
- G.8.9 Robust systems and controls to protect client money and assets are required to minimise the risk of dishonesty or inappropriate use of a client account. Every individual involved with client money and assets in the recognised law entity needs to know what the requirements are and what the implications are of a failure to comply.

- G.8.10 Strong internal financial controls should enable the management of the recognised law entity to:
- (a) measure and control financial performance;
 - (b) avoid over reliance on borrowing/overdraft facilities;
 - (c) ensure that drawings and remuneration do not exceed profits;
 - (d) avoid over-commitment to high fixed costs, such as premises and vehicles;
 - (e) implement efficient invoicing processes to obtain payment for work done in a timely way;
 - (f) ensure that any acquisitions follow proper legal and financial due diligence based on a well-thought-out business plan to control the associated risks; and
 - (g) plan properly for any diversification of the recognised law entity, in accordance with the business plan and using the right skills and the right people.
- G.8.11 Effective supervision is essential for the success of the recognised law entity. Recognised law entities need to ensure that their supervisory arrangements are effective and robust and kept under regular review.
- G.8.12 Effective supervision mechanisms are likely to include:
- (a) the provision of clear and complete instructions regarding the work to employees, including appropriate background information and details of the end result required and how it is to be achieved;
 - (b) regular meetings to discuss progress in both client work and the individual's own development;
 - (c) the use of established and clear management policies and systems covering conflict checks, file management, work allocation on a file, documentation and communication;
 - (d) a level of supervision which is proportionate to the ability and experience of the person being supervised;
 - (e) the effective use of mentoring, where appropriate.
- G.8.13 The supervisor's duty to ensure that the attorney-at-law or employee is effectively supervised applies no less where the attorney-at-law or employee is working at home or remotely.
- G.8.14 If a complaint is made about work carried out by an attorney-at-law or employee, recognised law entities may have to demonstrate that their supervision arrangements are effective and regular. Work for clients that is subject to supervision includes the handling of client money and compliance with R.4 (Client relations).

- G.8.15 R.8.6 requires attorneys-at-law and recognised law entities to ensure that all employees are properly trained and competent. 'Competent' is defined as being able to perform a task or role to a required standard by the application of essential knowledge, skill and understanding.
- G.8.16 It is for attorneys-at-law and recognised law entities to decide what approach to securing and maintaining competence will work for their business model but it may be necessary to provide evidence to demonstrate that issues of competence are addressed in the recognised law entity's procedures in relation to, for example, recruitment, ongoing work assessment and training and the degree to which such assessment or training is formally structured.
- G.8.17 A sole practitioner shall, in accordance with R.8, make appropriate and adequate provision for the running of the recognised law entity in the event of illness, death, incapacity or other absence. Proper arrangements need to be made for the supervision of the practice and employees, the operation of client and office accounts and the orderly closure or transfer of the practice, where necessary.
- G.8.18 It is a matter for the sole practitioner as to the details of supervisory arrangements and for ensuring that the supervisor has sufficient experience. The recognised law entity's bank should be notified of the arrangements in advance so that the client and office accounts can be effectively managed.
- G.8.19 If a sole practitioner decides to stop practising or is unable to practise for any reason such as disciplinary action, the clients shall be informed so that they can instruct another recognised law entity. Failure to do so could amount to misconduct or negligence.

Ref. Guidance to Rule 9

G.9 Client Accounts – Guidance

G.9.1 Client money is money of any currency that is received and held as cash, digital asset, cheque, draft or electronic transfer by a recognised law entity when the recognised law entity is providing legal services.

G.9.2 An attorney-at-law or recognised law entity may hold client money without a client account if the only client money received is advance payments for fees and unpaid disbursements. The money shall relate to fees or expenses incurred by the attorney-at-law or recognised law entity on behalf of their client and for which the recognised law entity or attorney-at-law is liable, for example, counsel or expert fees but this would not include, for example, disbursements for which their client is liable (such as stamp duty).

An attorney-at-law or recognised law entity shall ensure that the client has been properly advised and is given sufficient information about where their money will be held. It should be explained to the client that their money will not be held on account for them or specifically ring fenced, as the money may be held and used as part of the recognised law entity's own money in their business account. This is so that the client can make an informed decision about whether the client wishes their money to be held outside of a client account or consider other alternatives.

Ref. Guidance to Rule 10

G.10 Duties under anti-corruption legislation – Guidance

G.10.1 The purpose behind R.10 is primarily to reduce the risk of being inadvertently caught up in the commission of a crime by ensuring that an attorney-at-law is satisfied that he or she knows who he or she is dealing with at the outset of each retainer, the applicable legislation and the potential red flags.

G.10.2 The Code is not prescriptive; it does not specify the measures to be taken and it is therefore initially a matter for a recognised law entity to decide what arrangements are necessary. Attorneys-at-law and recognised law entities are expected to proportionate approach, depending on the circumstances, including knowledge of the client, the type of work involved and whether instructions are taken from the client in person or online. In deciding what is appropriate, therefore, recognised law entities may like to consider the size of the recognised law entity, the number of fee earners, the client profile, the different areas of work the recognised law entity does and the particular risks involved in those areas of work.

Ref. Guidance to Rule 11

G.11 Relations with other attorneys-at-law and third parties - Guidance

- G.11.1 P.2 requires attorneys-at-law to avoid bringing the profession into disrepute in their dealings with other attorneys-at-law and third parties. (The same requirement in relation to clients is at R.4.5.)
- G.11.2 Correspondence from other attorneys-at-law or recognised law entities should be answered with reasonable promptness. Where correspondence is received from a third party properly involved in a matter, and which requires a response, it should also be answered with reasonable promptness.
- G.11.3 If an attorney-at-law of another recognised law entity involved in a matter is not responding to correspondence, he or she should be reminded of his or her duties under R.11.1 and the guidance at G.11.2. If, despite those reminders, the attorney-at-law of the other recognised law entity refuses to respond, the matter should be raised with the Council.
- G.11.4 An attorney-at-law or employee of the attorney-at-law's recognised law entity should not make an electronic recording of a conversation with an attorney-at-law or employee of another recognised law entity without prior written notice having been given that the conversation will be recorded and the provision, if required, within a reasonable time, of a transcript to the attorney-at-law of the other recognised law entity at a reasonable cost.
- G.11.5 Care should be taken when attorneys-at-law are dealing with someone who does not have legal representation. It is important to find the right relation between acting with a view to the best interests of the client and not taking unfair advantage of another person. If an unrepresented opponent provides badly drafted documentation, attorneys-at-law should suggest that the opponent obtain legal representation. If such an opponent refuses to do so, attorneys-at-law should ensure that a balance is maintained between doing their best for the client and not taking unfair advantage of the opponent's lack of legal knowledge and drafting skills.
- G.11.6 When dealing with an unrepresented third party, attorneys-at-law should ensure that a contractual relationship is not inadvertently created and that the third party understands clearly that the attorney-at-law is acting for his or her client and does not owe the third party any duty to act in the third party's interests.
- G.11.7 If a person sends an attorney-at-law documents or money subject to an express condition, the attorney-at-law shall return the documents or money if he or she is unwilling or unable to comply with the condition. If attorneys-at-law are sent documents or money on condition that they are held to the sender's order, attorneys-at-law shall return the documents or money to the sender on demand.

- G.11.8 Attorneys-at-law shall give due consideration, taking into account the exceptions in R. 11.3 (as if it applied) whether it is appropriate to contact another party to a matter, if that party is represented by an attorney-at-law or a business carrying on the practice of an attorney-at-law.
- G.11.9 R.11.3 is not intended to prevent attorneys-at-law from dealing with other types of representative, if appropriate. Any such dealings will, of course, be subject to other, applicable, provisions of this Code.
- G.11.10 An undertaking is any statement, made by an attorney-at-law or an employee of the attorney-at-law's recognised law entity, that the attorney-at-law or the recognised law entity will do something or cause something to be done, or refrain from doing something or causing something to be done, given to someone who reasonably relies upon it. It can be given orally or in writing and need not include the word "undertake". It is recommended that oral undertakings be confirmed or recorded in writing for evidential purposes.
- G.11.11 The requirement under R.11.4 is to perform an undertaking in a timely manner and therefore it is important that there is a clear time frame within which an undertaking should be fulfilled. If the undertaking does not contain a timeframe, fulfilment is likely to be expected "within a reasonable time". What that amounts to will depend on the circumstances but the giver should ensure the recipient is kept informed of the likely timescale and any delays to it.
- G.11.12 Attorneys-at-law and recognised law entities shall maintain an effective system which controls the giving of undertakings (who can give them and in what circumstances) and records when undertakings have been given and when they have been discharged. Employees need to be provided with training on how to comply with the professional obligations arising.
- G.11.13 The fees of a lawyer of another jurisdiction may be regulated by a scale approved by the relevant regulatory body, bar association or Council.

Ref. Guidance to Rule 12

G.12 Publicity and communications – Guidance

- G.12.1 When publicising the recognised law entity or any of the activities of the recognised law entity, attorneys-at-law shall comply with P.2 and P.3 and ensure that all publicity and communications comply with the high ethical and technical standards of the legal profession.
- G.12.2 Attorneys-at-law and recognised law entities shall ensure that all publicity is clear, fair and not misleading or inaccurate. All publicity shall comply with the general law on advertising, including provisions designed to protect consumers.
- G.12.3 Advertising material may contain any factual statement the truth of which an attorney-at-law is able to justify.
- G.12.4 If an attorney-at-law or recognised law entity is in doubt as to whether the publicity relating to charges is clear, they should err on the side of caution and re-word the publicity or provide further information.
- G.12.5 R.12.4 prohibits unsolicited visits or telephone calls but not unsolicited emails. In addition, attorneys-at-law, employees and recognised law entities shall comply with relevant data protection legislation and any restrictions in relation to direct marketing by email.
- G.12.6 When contacting prospective clients, care shall be taken to ensure that any publicity does not constitute harassment. Approaching people in the street, in hospital or at the scene of an accident, without invitation, will be in breach of R.12.4.
- G.12.7 The letterhead, website and emails of an attorney-at-law’s practice shall comply with all legal and regulatory requirements including the Code attorneys-at-law are to be familiar with the legal and regulatory requirements relating to advertising.
- G.12.8 Other than where specifically referenced in a reported case or judgment, clients can only be named in publicity if they have given consent.

Ref. Guidance to Rule 13

G.13 Cooperation with Council – Guidance

- G.13.1 The aim of R.13 is to set out certain practice obligations of attorneys-at-law in particular in their relation with the Council (as principal regulatory body), including the duty to co-operate with the Council as required by P.9.
- G.13.2 The duties imposed under this Rule may be restricted by an attorney-at-law's legal obligations to his or her clients or others, for example, the obligation to protect client confidentiality and privilege. Even so, attorneys-at-law are expected to co-operate with the Council by, as the case may be, redacting information or providing information on an anonymised or confidential basis or by obtaining their client's consent before proceeding.
- G.13.3 Restrictions or conditions may be imposed by the Legal Services Supervisory Authority on an attorney-at-law or non-practising attorney-at-law or employee in accordance with the Act for failure to comply with any regulatory obligations. Failure to comply with those restrictions or conditions may result in further sanction.
- G.13.4 Failure to provide information within the stipulated timescale is likely to lead to disciplinary action and/or the imposition of conditions or restrictions on their ability to practise.
- G.13.5 R.13.1 (e) and (f) exist to protect the public and the integrity of the profession. It is not unusual for professional colleagues to be aware of serious misconduct (such as dishonesty or deception) and/or risk arising from a recognised law entity's financial problems before any complaint has been made. There may be concerns that reporting such concerns would be unethical or discourteous. However, failure to do so places the public at risk and may result in damage to the good repute of the profession.
- G.13.6 Unless attorneys-at-law are required by law to report a matter, R.13.1 (e) and (f) do not apply to confidential and/or privileged information disclosed by another attorney-at-law to the attorney-at-law.
- G.13.7 If the Council is notified, under R.13.1 (e) or (f), it can take appropriate and timely action, minimise the impact on clients which should reduce the ultimate costs, both for the Council and for the attorney-at-law. The Council will consider information of this nature on an anonymous basis, if requested.
- G.13.8 If attorneys-at-law discover serious issues regarding the competence and fitness and propriety of employees or attorneys-at-law, the attorneys-at-law shall take appropriate action internally, in addition to the obligations under R.13.1 (f). See also G.13.10.

- G.13.9 If an attorney-at-law in a recognised law entity becomes aware of serious misconduct on the part of an attorney-at-law or employee in the same recognised law entity, he or she should bring the matter to the attention of the partners or attorneys-at-law of the recognised law entity so that they can report the matter under R.13.1 (f). If a report is made by those attorneys-at-law on behalf of the recognised law entity, they should discuss the issues with their insurer and take the steps required to limit any liability.
- G.13.10 Where a recognised law entity concludes that it is not financially viable, the Council shall be informed immediately and the responsible attorneys-at-law shall take appropriate steps either to ensure an orderly wind down or to obtain assistance so that the recognised law entity becomes financially viable. Failure to notify the Council and take appropriate steps is a breach of P.8 and P.9.
- G.13.11 Where a practice closes, whether as a result of financial issues or otherwise, the attorneys-at-law shall ensure that there are appropriate arrangements for the orderly transfer of clients' property and any assets held and that clients are provided with relevant information as to where their property or assets will be transferred.
- G.13.12 An agreement, whether with a client or a third party, cannot affect the rights of the Council to investigate misconduct or to consider complaints. To attempt to make such an agreement would breach R.13.4. Examples are:
- (a) accepting instructions to act for a client which involve any agreement preventing the Council from investigating an attorneys-at-law's conduct or the conduct of an attorney-at-law or employee of the recognised law entity;
 - (b) improperly offering or making payment in return for not reporting alleged misconduct;
 - (c) improperly demanding or accepting payment for not reporting a fellow attorney-at-law for misconduct; and
 - (d) harassing or bringing improper pressure to bear on a complainant or potential complainant.
- G.13.13 It would not be improper to try to persuade the client that the client's complaint is unfounded, provided that is the case and, in a case of inadequate professional services, to make a genuine attempt to propose an agreement to compensate the aggrieved client. However, an attorney-at-law may not make the withdrawal of a complaint already made to the Council a condition of compensating a client. Where a complaint is withdrawn for any reason, the Council may continue with a complaint in its own name.

- G.13.14 The Council may use or disclose any information obtained under R.13:
- (a) in proceedings before the Council or the Grand Court or other disciplinary tribunal;
 - (b) to the police or the Attorney General for use in investigating the matter and in any subsequent prosecution, if it appears that an attorney-at-law or any employee of a recognised law entity may have committed a serious criminal offence; and/or
 - (c) to any other relevant professional body.
- G.13.15 Attorneys-at-law and their employees shall comply with all reasonable requests from the Council (or its appointee(s)) as to:
- (a) the form in which documents held electronically are produced; and
 - (b) photocopies of any documents to take away. The Council is not entitled to remove original documents

Ref. Guidance to Rule 14

G.14 Waivers - Guidance

- G.14.1 Waivers will only be granted in exceptional or very particular circumstances. The application will need to explain why the circumstances are exceptional or very particular in order for the grant of a waiver to be considered. Waivers will not be granted where to do so would place clients or clients' money or assets at risk or where the grant is likely to be in conflict with the purpose of the Rule.

- G.14.2 The list in R.14 should not be taken as an indication that any other Rule may be waived in any given circumstances. Each application will be considered in the broader context of the Principles.

Ref.	Annex
Guidance to Rule 4	Annex to Guidance 4 — Client relations - Guidance

G. 4.

G. 4.30 and G. 4.31 On the termination of a retainer, a recognised law entity must consider which documents belong to the client, which documents belong to the recognised law entity and whether any documents belong to a third party, and accordingly what should be done with the documents in each category.

The categories, and what should be done with the documents in this category, are as follows:

- (a) Physical documents, in existence before the retainer, held by the recognised law entity as agent for and on behalf of a client or third party belong to that client or third party;
- (b) Physical documents which belong to a client or a third party must be dealt with in accordance with the instructions of the client or third party subject to the recognised law entity's lien (if any);
- (c) Physical documents which come into existence during the retainer and for the purpose of the retainer fall into four broad categories;
 - (i) Documents prepared by a recognised law entity for the benefit of the client which have been paid for by the client, either directly or indirectly, belong to the client.
Examples are: instructions and briefs; most attendance notes; drafts; copies made for the client's benefit of letters received by the attorney-at-law; copies of letters written by the attorney-at-law to third parties if contained in the client's case or transaction file and used for the purpose of the retainer;
 - (ii) Documents prepared by the recognised law entity for the recognised law entity's own benefit or protection, the preparation of which is not regarded as an item chargeable against the client, belong to the recognised law entity;
Examples are: copies of letters written to the client; copies made for the attorney-at-law's own benefit of letters received by the attorney-at-law; copies of letters written by the attorney-at-law to third parties if made for the attorney-at-law's own benefit; intra-office memoranda; entries in diaries; timesheets; office journals; books of account;
 - (iii) Documents sent to an attorney-at-law by the client during the retainer, the property in which was intended at the date of dispatch to pass from the client to the attorney-at-law, belong to the attorney-at-law;
Examples are: letters, authorities and instructions written or given by the client;
 - (iv) Documents prepared by a third party during the course of the retainer and sent to the attorney-at-law (other than at the attorney-at-law's expense) belong to the client;
Examples are: receipts and vouchers for disbursements made on behalf of the client; medical and witness reports; counsel's advices and opinions; letters received by an attorney-at-law from third parties.