

Subsidiary Legislation made under s.16.

Code of Conduct 2022

Revoked by LN.2023/101 as from 1.5.2023

LN.2022/331

Commencement **Not In Force**

Pursuant to section 16 of the Legal Services Act 2017 the Chief Justice, with the concurrence of the Legal Services Regulatory Authority and the Law Council, has prescribed this Code of Conduct in regard to the professional conduct of and provision of legal services by Authorised Persons:

Title.

1. This Code shall be referred to as the Code of Conduct 2022.

Commencement.

2. This Code comes into operation on the date of commencement of section 5 of the Legal Services Act 2017.

INDEX

Contents

Chapter 1—Introduction

- 1.1 Interpretation and Definitions
- 1.2 Duties of a Lawyer
- 1.4 Misconduct defined in relation to Lawyers and Law Firms
- 1.5 Unsatisfactory conduct defined in relation to Lawyers and Law Firms

General

- 1.6 Conduct for which Lawyer may be disciplined
- 1.8 Nature of Code
- 1.9 Provision of information
- 1.10 Electronic provision of information

Chapter 2—Rule of law and administration of justice

- 2.3 Proper purpose
- 2.4 Assisting in fraud or crime
- 2.5 Certificates
- 2.7 Threats
- 2.8 Reporting misconduct and unsatisfactory conduct
- 2.11 Unauthorised practice of law

Chapter 3—Competence and client service

- 3.1 Respect and courtesy
- 3.4 Provision of information
- 3.8 Complaints mechanisms
- 3.9 Continuing education
- 3.10 Retainers entered into prior to this Code coming into operation.

Chapter 4—Availability of Lawyers to public and retainers

- 4.1 Refusing instructions
- 4.2 Duty to complete retainer
- 4.3 Client terminating retainer

Chapter 5—Independence

- 5.1 Independent judgement and advice
- 5.4 Conflicting interests
- 5.5 Conflicting business interest
- 5.6 Third party conflicts of interest
- 5.7 Personal relationships
- 5.8 Gifts
- 5.9 Collateral rewards
- 5.10 Drafting instruments
- 5.11 Claims against Lawyer

Chapter 6—Client interests

- 6.1 Conflicting duties
- 6.2 Conflicting office
- 6.3 Attempts to restrict representation through the use of Lawyer Panels or Otherwise

Chapter 7—Disclosure and communication of information to clients**Chapter 8—Confidential information**

- 8.1 Duration of duty of confidence
- 8.2 When disclosure is required
- 8.4 When disclosure is permitted
- 8.7 Use of confidential information prohibited
- 8.8 Other confidential information

Chapter 9—Fees

- 9.1 Reasonable fee factors
- 9.2 Fee agreements
- 9.3 Fees in advance
- 9.4 Fee information and advice
- 9.6 Final account
- 9.7 Conditional fee agreements
- 9.8 Fee sharing

Chapter 10—Professional dealings

- 10.1 Respect and courtesy
- 10.2 Communicating with another Lawyer's client
- 10.3 Undertakings
- 10.4 Payments
- 10.7 Fees of other Lawyers

10.8 Making recordings

Chapter 11—Proper professional practice

- 11.1 Misleading and deceptive conduct
- 11.2 Direct solicitation
- 11.3 Supervision and management
- 11.4 Prevention of crime or fraud
- 11.5 Accountability
- 11.7 Co-operation with the LSRA

Chapter 12—Third parties

- 12.2 Third party fees

Chapter 13—Lawyers as officers of court

- 13.1 Duty of fidelity to court
- 13.2 Protection of court processes
- 13.3 Informed instructions
- 13.4 Alternatives to litigation
- 13.5 Independence in litigation
- 13.8 Lawyer as witness
- 13.9 Reputation of other parties
- 13.10 Disclosure and privilege
- 13.11 Presenting evidence and witnesses
- 13.12 Submissions on law
- 13.13 Duties of prosecution Lawyer
- 13.14 Duties of defence Lawyer

Chapter 14— Lawyers and Foreign Lawyers as In-house Lawyers on Part 5 of the Register

Chapter 15— Crown Lawyers on Part 3 of the Register

Chapter 16 –Legal Executives on Part of the Register

Chapter 17 – Legal Executives and Other Persons on Part 6 of the Register

Chapter 18- Law Costs Draftsmen on Part 7 of the Register

Chapter 19 – Foreign Counsel on Part 2 and European/EEA lawyers on Part 8 of the Register

Chapter 20 – Law Firms on Part 9 of the Register

CHAPTER 1

Introduction

Interpretation and Definitions

1. In this Code –

“Act” means the Legal Services Act 2017, including any amendments to that Act;

“Authorised Person” has the same meaning as in the Act;

“close personal relationship” includes, but is not limited to, the relationships of parents and children, siblings, spouses, civil partners, and the relationship between persons living together as partners on a domestic basis;

“court” means a court or tribunal before which a Lawyer may appear;

“independent advice” means advice given by a Lawyer who—

(a) in respect of the matter on which the advice is given, has—

(i) no conflicting interest of the type referred to in rules 5.4, 5.5, or 5.6; and

(ii) no conflicting duty to any other client or person; and

(b) is not a member of a practice in which any other member has a conflicting interest or duty of the type referred to in paragraph (a) above;

“informed consent” means consent given by the client after the matter in respect of which the consent is sought and the material risks of and alternatives to the proposed course of action have been explained to the client and the Lawyer believes, on reasonable grounds, that the client understands the issues involved;

“Lawyer” has the same meaning as in the Act;

“Law Costs Draftsman” has the same meaning as in the Act;

“Law Firm” has the same meaning set out in the Act;

“Legal Services” has the same meaning as under the Act;

“LSRA” means the Legal Services Regulatory Authority;

“member”, in relation to a practice, means and includes—

- (a) a Lawyer who owns the practice either solely or with other Lawyers; and
- (b) a Lawyer who is a partner in the practice or is employed by the practice or is a consultant in the practice; and
- (c) in the case of a Law Firm a Lawyer who is a director, shareholder, or employee of the practice;

“professional principles” has the meaning in section 15(4) of the Act;

“public authority” means any tribunal, commission, panel, board, parliamentary committee, or body, which in each case carries out a public function;

“Register” means the Register established under section 6 of the Act;

“regulatory arrangements” has the meaning in section 10 of the Act;

“Reserved Legal Activity” has the meaning in section 4 of the Act;

“retainer” means an agreement under which a Lawyer undertakes to provide or does provide legal services to a client, whether that agreement is express or implied, whether recorded in writing or not, and whether payment is to be made by the client or not;

“Roll of the Court” has the same meaning as in the Supreme Court Act;

“Solicitors Accounts Rules” means the Rules concerning Solicitors Accounts made under the Act or the Supreme Court Act;

“Supreme Court Act” means the Supreme Court Act 1960 as amended from time to time.

- 1.1 In this Code, unless the context otherwise requires, any reference to a rule extends to and includes all of its subclauses.

Duties of a Lawyer

- 1.2 A Lawyer shall at all times uphold the rule of law and the professional principles. This means a Lawyer must-

- (a) act with independence and integrity;
- (b) maintain proper standards of work;
- (c) act in the best interests of those being provided legal services;
- (d) safeguard the confidentiality of those to whom legal services are provided; and
- (e) maintain proper systems of control to prevent, detect and report money laundering and terrorist financing.

1.3 This Code is based on those professional principles, and the following is a non-exhaustive list of the duties which a Lawyer must comply with in order to uphold the professional principles.

- (a) a paramount duty to the Court and the administration of justice, which shall prevail to the extent of inconsistency with any of the professional principles;
- (b) a duty to deliver legal services competently, diligently and as promptly as reasonably possible;
- (c) a duty to behave in a way that maintains the confidence and trust the public places in the legal profession and the provision of legal services;
- (d) a duty to comply with his/her legal and regulatory obligations, including under this Code and to deal with his/her regulatory body in an open, timely and co-operative manner; to run his/her business and/or carry out his/her role in the business effectively and in accordance with proper governance and sound financial and risk management principles and in a way that encourages equality of opportunity and respect for diversity;
- (e) a duty to protect client money and assets;
- (f) a duty to act in accordance with all fiduciary duties and duties of care owed by Lawyers to their clients;
- (g) a duty to comply with the Legal Aid and Duty Solicitor Scheme Protocol established by the Clerk to the Magistrates' with the concurrence of the Law Council.

Misconduct defined in relation to Lawyers and Law Firms

- 1.4 In this Code, “misconduct”, in relation to a Lawyer or a Law Firm, means conduct of the Lawyer or Law Firm that occurs at a time when he or she or it is providing legal services or as provided for in rule 1.6 and is conduct-
- (a) that would reasonably be regarded by Lawyers of good standing as disgraceful or dishonourable; or
 - (b) that consists of a wilful or reckless contravention of any provision of the Act or of this Code or any other regulations or practice rule made under the Act that apply to the Lawyer or Law Firm or of any other law relating to the provision of legal services; or
 - (c) that consists of a wilful or reckless failure on the part of the Lawyer, or, in the case of a Law Firm, on the part of a Lawyer who is actively involved in the provision by the Law Firm of legal services, to comply with a condition or restriction to which a practising certificate held by the Lawyer, or the Lawyer so actively involved, is subject; or
 - (d) that consists of the charging of what would reasonably be regarded by Lawyers of good standing to be of grossly excessive costs for legal work carried out by the Lawyer or Law Firm taking account of all relevant factors set out in rule 9.1 below or
 - (e) which is unconnected with the provision of legal services by the Lawyer or incorporated law firm but which would justify a finding that the Lawyer or Law Firm is not a fit and proper person or is otherwise unsuited to engage in practice as a Lawyer or a Law Firm.

Unsatisfactory conduct defined in relation to Lawyers and Law Firms

- 1.5 In this Code, “unsatisfactory conduct”, in relation to a Lawyer or a Law Firm, means-
- (a) conduct of the Lawyer or Law Firm that occurs at a time when he or she or it is providing legal services and is conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Lawyer; or

- (b) conduct of the Lawyer or Law Firm that occurs at a time whether he or she or it is providing legal services and is conduct that would be regarded by Lawyers of good standing as being unacceptable, including –
 - (i) conduct unbecoming a Lawyer or a Law Firm; or
 - (ii) unprofessional conduct; or
 - (iii) conduct that could bring the profession into disrepute;
- (c) conduct consisting of a contravention of the Act, or of this Code or any other regulations or practice Code made under the Act that apply to the Lawyer or Law Firm, or of any other Act relating to the provision of legal services (not being a contravention that amounts to misconduct under rule 1.4); or
- (d) conduct consisting of a failure on the part of the Lawyer, or, in the case of a Law Firm, on the part of a Lawyer who is actively involved in the provision by the incorporated law firm of legal services, to comply with a condition or restriction to which a practising certificate held by the Lawyer, or the Lawyer so actively involved, is subject (not being a failure that amounts to misconduct under rule 1.4).

General

Conduct for which a Lawyer may be disciplined

- 1.6 The kinds of conduct, including criminal offences, for which a Lawyer or former Lawyer may be disciplined are as follows:
- (a) misconduct as defined in rule 1.4;
 - (b) unsatisfactory conduct as defined in rule 1.5;
 - (c) negligence or incompetence in a Lawyer's professional capacity of such a degree or so frequent as to reflect on the Lawyer's fitness to practise, or as to bring the legal profession into disrepute;
 - (d) conviction of an offence punishable by imprisonment where the conviction reflects on the Lawyer's fitness to practise, or tends to bring the legal profession into disrepute;

- (e) non-disclosure to the LSRA, when seeking admission to practice in Gibraltar or at any time after such admission, of any adverse finding, conviction or other determination by any Court, tribunal or disciplinary body in Gibraltar or elsewhere concerning the Lawyer's honesty, integrity or generally his or her suitability to practise as a Lawyer in Gibraltar or elsewhere.

1.7 In accordance with section 16(5) of the Act, a breach of the Code shall be actionable under such discipline rules as may be made under the Act or under Part IV of the Act.

Nature of Code

1.8 This is the Code in regard to the professional conduct of and provision of legal services by Authorised Persons required by Section 16(1) of the Act, who must comply with the Code at all time in accordance with section 16(4) of the Act. The Code is not an exhaustive statement of the conduct expected from Authorised Persons.

Provision of information

1.9 All information that a Lawyer is required to provide to a client under this Code must be provided in a manner that is clear and not misleading given the identity and capabilities of the client and the nature of the information.

Electronic provision of information

1.10 A requirement in this Code to provide a client with information is satisfied by providing the information—

- (a) in writing in a hard copy document ; or
- (b) in an acceptable electronic form.

1.11 Unless a client otherwise instructs, an electronic form is acceptable where the information is readily accessible to the client concerned and is available for subsequent reference. This rule applies whether or not a particular rule states that information is to be given in writing.

CHAPTER 2

Rule of law and administration of justice

2. A Lawyer is obliged to uphold the rule of law and to facilitate the administration of justice as an overriding and paramount duty set out in rule 1.2(a) above.

2.1 The overriding duty of a Lawyer is as an officer of the court.

2.2 A Lawyer must not attempt to obstruct, prevent, pervert, or defeat the course of justice.

Proper purpose

2.3 A Lawyer must use legal processes only for proper purposes. A Lawyer must not use, or knowingly assist in using, the law or legal processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation.¹

Assisting in fraud or crime

2.4 A Lawyer must not advise a client to engage in conduct that the Lawyer knows to be fraudulent or criminal, nor assist any person in an activity that the Lawyer knows, or ought reasonably to know, is fraudulent or criminal. A Lawyer must not knowingly assist in the concealment of fraud or crime.

2.4.1 Subject to rule 2.4, a Lawyer may assist a client in seeking to avoid or minimise any penalty or adverse effects that flow from fraud or crime.

Certificates

2.5 A Lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.

2.6 If a Lawyer subsequently discovers that a certificate given by the Lawyer was or has become inaccurate or incomplete to a material extent, the Lawyer must immediately take reasonable steps to correct the certificate.

Threats

¹ *Examples of the breaches of the rule might include: issuing a statutory demand under the Companies Act, knowing that (or failing to make inquiries whether) the debt is bona fide disputed;*

- 2.7 A Lawyer must not threaten, expressly or by implication, to make any accusation against a person or to disclose something about any person for any improper purpose.

Reporting misconduct and unsatisfactory conduct

- 2.8 Subject to the obligation on a Lawyer to protect privileged communications, a Lawyer who has reasonable grounds to suspect that another Lawyer has been guilty of misconduct must make a confidential report to the LSRA at the earliest opportunity.

2.8.1 This rule applies despite the Lawyer's duty to protect confidential non-privileged information.

2.8.2 Where a report by a Lawyer to the LSRA under rule 2.8 may breach the Lawyer's duty to protect confidential non-privileged information, the Lawyer should also advise his or her client of the report.

- 2.9 Subject to the obligation on a Lawyer to protect privileged communications, a Lawyer who has reasonable grounds to suspect that another Lawyer has been guilty of unsatisfactory conduct may make a confidential report to the LSRA, in which case rules 2.8.1 and 2.8.2 will likewise apply.

- 2.10 A Lawyer must not use, or threaten to use, the complaint or the disciplinary reporting process under rule 2.8 or 2.9 for an improper purpose, including where he or she does not have prima facie evidence to support the alleged misconduct or unsatisfactory conduct.

Unauthorised practice of law

- 2.11 If a Lawyer learns that a person is committing an offence by—

- (a) providing unauthorised legal services in breach of the Act; or
- (b) pretending to be entitled to carry on a reserved legal activity or to provide legal services under the Act or engaging in misleading conduct regarding their right or qualification to provide legal services the Lawyer must immediately report the matter to the LSRA and, unless it is contrary to the interests of the Lawyer's client, refuse to deal with that person.

- 2.12 A Lawyer or Law Firm shall not employ a person who has been suspended from practice or from the provision of legal services or struck off the Roll of the Court

or in any way allow such a person to assist in the provision of legal services by that Lawyer or Law Firm.

Chapter 3

Competence and client service

3. In providing regulated services to a client, a Lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.

Respect and courtesy

- 3.1 A Lawyer must at all times treat a client with respect and courtesy and must not act in a discriminatory manner in contravention of section 14 of the Gibraltar Constitution Order.
- 3.2 A Lawyer must respond to inquiries from the client in a timely manner.
- 3.3 A Lawyer must inform the client if there are any material and unexpected delays in a matter.

Provision of information

- 3.4 A Lawyer must, in advance of commencing work or in a case of urgency, as soon as possible thereafter, provide a client with information in writing on the principal aspects of client service including the following-
 - (a) the basis on which the fees will be charged, when payment of fees is to be made, and whether the fee may be deducted from funds held in trust on behalf of the client;
 - (b) the professional indemnity arrangements of the Lawyer's practice. This obligation is met if it is disclosed that the practice holds indemnity insurance that meets or exceeds any minimum standards from time to time required under the Act or the Supreme Court Act;
 - (c) the procedures in the Lawyer's practice for the handling of complaints by clients, and advice on the existence and availability of the LSRA's complaints service and how the LSRA may be contacted in order to make a complaint.

- 3.5 A Lawyer must, prior to undertaking significant work under a retainer, provide in writing to the client the following-
- (a) client care and service information; and
 - (b) the name and status of the person or persons who will have the general carriage of, or overall responsibility for, the work; and
 - (c) any provision in the retainer that limits the extent of the Lawyer's or the practice's obligation to the client or limits or excludes liability. The terms of any of those limitations must be fair and reasonable having regard to the nature of the legal services to be provided and the surrounding circumstances.
- 3.6 If information provided by a Lawyer in terms of rule 3.4 or 3.5 becomes inaccurate in a material respect, the Lawyer must ensure that the information is updated with due expedition. rules 3.4 and 3.5 are complied with where a Lawyer has previously provided a client with the information required and the information remains accurate.
- 3.7 Rules 3.4 and 3.5 do not apply—
- (a) where the Lawyer is instructed by another Lawyer or by a member of the legal profession in an overseas country, unless the fee information or other advice is requested by the instructing Lawyer or member of the legal profession, as the case may be;
 - (b) if it is, in the circumstances, impracticable for the Lawyer to provide the information referred to in those Code; or
 - (c) if there is no reasonable likelihood that the client will understand the information because the client—
 - (i) is of a young age; or
 - (ii) is a person with a mental health issue or disability; or
 - (d) in respect of regulated services rendered by an in-house Lawyer to his or her employer where the in-house Lawyer is engaged under an employment agreement.

Complaints mechanisms

- 3.8 Each Lawyer must ensure that the Lawyer's practice establishes and maintains appropriate procedures for handling complaints by clients with a view to ensuring that each complaint is dealt with promptly and fairly by the practice. When a Lawyer owns a sole practice, the complaints procedure may include the reference of complaints to an independent Lawyer for consideration. This rule does not bind a Lawyer whose status in a practice is solely that of an employee.

Continuing education

- 3.9 A Lawyer must undertake the continuing education and professional development necessary to ensure an adequate level of knowledge and competence in his or her fields of practice and that may be prescribed by the LSRA.

Retainers entered into prior to the coming into operation of this Code

- 3.10 Rules 3.4 and 3.5 do not apply to a retainer entered into by a Lawyer before the coming into operation of this Code.

CHAPTER 4

Availability of Lawyers to public and retainers

4. A Lawyer as a professional person must be available to the public and must not, without good cause, refuse to accept instructions from any client or prospective client for services within the reserved areas of work that are within the Lawyer's fields of practice.

Refusing instructions

- 4.1 Good cause to refuse to accept instructions includes a conflict of interest, a lack of available time, the instructions falling outside the Lawyer's normal field of practice, instructions that could require the Lawyer to breach any professional obligation or law, and the unwillingness or inability of the prospective client to agree the Lawyer's terms of engagement or pay the normal fee of the Lawyer concerned for the relevant work.

4.1.1 The following are not good cause to refuse to accept instructions-

- (a) any grounds of discrimination prohibited by law including those set out in section 14 of the Gibraltar Constitution Order;
- (b) the merits of the matter upon which the Lawyer is consulted save to the extent that the Lawyer considers that the client's case has no

reasonable prospect of success and/or is scandalous, frivolous, vexatious and/or otherwise an abuse of process.

4.1.2 A Lawyer who has a retainer under which he or she is to remain available to receive instructions from the client concerned is entitled to decline instructions from others that would be inconsistent with the Lawyer's obligations under the retainer.

4.1.3 A Lawyer who declines instructions must give reasonable assistance to the person concerned to find another Lawyer save to the extent that the Lawyer considers that the client's case would involve another professional in a breach of professional obligation or law, or where the case has no reasonable prospect of success and/or is scandalous, frivolous, vexatious and/or otherwise an abuse of process.

Duty to complete retainer

4.2 A Lawyer who has been retained by a client must undertake the legal services required by the client under the retainer unless-

- (a) the Lawyer is discharged from the engagement by the client; or
- (b) the Lawyer and the client have agreed that the Lawyer is no longer to act for the client; or
- (c) the Lawyer terminates (or at their discretion, agrees to suspend) the retainer for good cause and after giving reasonable notice to the client, specifying the grounds for termination (or suspension).

4.2.1 Good cause includes—

- (a) instructions that require the Lawyer to breach any professional obligation or law;
- (b) the inability or failure of the client to pay a fee or other costs on the agreed basis or, in the absence of an agreed basis, a reasonable fee or request for costs incurred at the appropriate time (which includes a failure to pay sums requested on account of fees and costs);
- (c) the client misleading or deceiving the Lawyer in a material respect;
- (d) the client failing to provide instructions to the Lawyer in a sufficiently timely way;

- (e) except in litigation matters, the adoption by the client against the advice of the Lawyer of a course of action that the Lawyer believes is highly imprudent and may be inconsistent with any of the professional principles.

4.2.2 None of the matters set out in rule 4.1.1 is good cause to terminate (or suspend) a retainer.

4.2.3 A Lawyer must not terminate (or suspend) a retainer or withdraw from proceedings on the ground that the client has failed to make arrangements satisfactory to the Lawyer for payment of the Lawyer's costs, unless the Lawyer has—

- (a) had due regard to his or her fiduciary duties to the client concerned; and
- (b) given the client reasonable notice to enable the client to make alternative arrangements for representation.

4.2.4 A Lawyer who terminates a retainer must give reasonable assistance to the client to find another Lawyer, except where provided for in rule 4.1.3.

Client terminating retainer

4.3 A client has a right to terminate a retainer at any time subject only to compliance with any agreed terms in the retainer as to grounds and notice for termination, which are reasonable in the circumstances of the particular case.

4.3.1 Termination of the retainer by the client does not affect any entitlement of the Lawyer to be reimbursed for services reasonably and properly provided to the client prior to the termination of the retainer and any entitlement of the Lawyer to seek damages for breach of a fixed term retainer when it is reasonable to do so in the circumstances of the particular case.

4.4 A Lawyer has no proprietary interest in a client or any case or transaction and must not exert undue pressure on a client not to terminate a retainer or to re-engage the Lawyer after termination of the retainer.

4.4.1 Subject to any statutory provisions to the contrary, upon changing Lawyers a client has the right either in person or through the new Lawyer to all documents, records, funds, or property held on the client's behalf. However, this does not include documents, records, funds, or property

prepared by the Lawyer for his own benefit or protection as the means by which the Law Firm discharges its function e.g. file copies of letters written to the client, notes regarding time taken, copies of internal emails and correspondence, accounting records or any other property made for protective purposes regarding advice to the client (i.e. drafts and working papers generally) The former Lawyer must act upon any written request to documents without undue delay subject only to any lien² that the former Lawyer may claim.³

4.4.2 If the matter in issue is urgent, the former Lawyer who holds a lien over documents must make the documents available to the client's new Lawyer on receipt of an undertaking from the new Lawyer that the former Lawyer's fee will be paid in priority to the fee of the new Lawyer.

4.4.3 Where a client changes Lawyers, and funds, documents, or property of the former client are the subject of an undertaking given by the former Lawyer to a third party, the former Lawyer may decline to release the funds, documents, or property concerned to the new Lawyer or client until the former Lawyer is discharged from the undertaking to the third party.

4.4.4 Subject to the former Lawyer's legal right to a lien, the interests of the client must be foremost in facilitating the transfer of the client's documents and records.

4.5 Rule 4.4 and this rule do not prevent—

- (a) the inclusion in a retainer of a term authorising the Lawyer to retain copies of the client's documents and records; or
- (b) a practice from retaining copies of the client's documents and records on termination of the retainer so long as it is reasonably considered that it will or may be necessary to refer to the documents or records for the purpose of defending any complaint or claim by the client or other proceedings against the practice. or otherwise where such record-keeping is in accordance with the law.

CHAPTER 5

² A lien is a legal claim of a person against the property of another person that secures the payment of a debt or the fulfilment of an obligation owed by the other person.

³ This rule does not limit any legal rights that a client may have to copies of documents.

Independence

5. A Lawyer must be independent and free from compromising influences or loyalties when providing services to his or her clients.

Independent judgement and advice

- 5.1 The relationship between Lawyer and client is one of confidence and trust that must never be abused.
- 5.2 The professional judgement of a Lawyer must at all times be exercised within the bounds of the law and the professional obligations of the Lawyer solely for the benefit of the client.
- 5.3 A Lawyer must at all times exercise independent professional judgement on a client's behalf. A Lawyer must give objective advice to the client based on the Lawyer's understanding of the law.

Conflicting interests

- 5.4 A Lawyer must not act or continue to act if there is a conflict or a significant risk of a conflict between the interests of the Lawyer and the interests of a client for whom the Lawyer is acting or proposing to act.
 - 5.4.1 Where a Lawyer has an interest that touches on the matter in respect of which legal services are required, the existence of that interest must be disclosed to the client or prospective client irrespective of whether a conflict or a significant risk of a conflict exists.
 - 5.4.2 A Lawyer must not act for a client in any transaction in which the Lawyer has an interest unless the matter is not contentious and the interests of the Lawyer and the client correspond in all respects.
 - 5.4.3 A Lawyer must not enter into any financial, business, or property transaction or relationship with a client if there is a significant risk of the relationship of confidence and trust between Lawyer and client being compromised.
 - 5.4.4 A Lawyer who enters into any financial, business, or property transaction or relationship with a client must advise the client of the right to receive independent advice in respect of the matter and explain to the client that

should a conflict of interest arise the Lawyer must cease to act for the client on the matter and, without the client's informed consent, on any other matters. This rule 5.4.4 does not apply where—

- (a) the client and the Lawyer have a close personal relationship; or
- (b) the transaction is a contract for the supply by the client of goods or services in the normal course of the client's business; or
- (c) a Lawyer subscribes for or otherwise acquires shares in a listed company for which the Lawyer's practice acts.

5.4.5 In this rule, a Lawyer is deemed to be a party to a transaction if the transaction is between entities that are related to the Lawyer by control (including a trusteeship, directorship, or the holding of a power of attorney) or ownership (including a shareholding), or between parties with whom the Lawyer or client has a close personal relationship.

Conflicting business interests

5.5 A Lawyer must not engage in a business or professional activity other than the practice of law where the business or professional activity would or could reasonably be expected to compromise the discharge of the Lawyer's professional obligations.

5.5.1 Where a Lawyer or the Lawyer's practice provides, or intends to provide to clients, services other than regulated services, the services must—

- (a) be associated with the provision of legal services; and
- (b) be provided by the Lawyer or the Lawyer's practice or by an entity in which the Lawyer or the Lawyer's practice has a controlling interest.

5.5.2 Where a Lawyer provides services in accordance with rule 5.5.1, he or she must ensure that clients are aware at all times of the extent to which services provided to them are regulated and the extent to which protections such as professional indemnity insurance apply to the delivery of the services.

Third party conflicts of interest

5.6 A Lawyer must ensure that the existence of a close personal relationship with a third party does not compromise the discharge of the duties owed to a client.

- 5.6.1 A Lawyer must not act if there is a conflict of interest or an appearance of a conflict of interest between a client and a third party with whom the Lawyer has a close personal relationship.
- 5.6.2 Where a person with whom the Lawyer has a close personal relationship has an interest in the matter being dealt with or proposed to be dealt with on behalf of the client, the existence of that close personal relationship and the nature of the interest must be disclosed to the client or prospective client irrespective of whether an actual conflict of interest exists.
- 5.6.3 A Lawyer is not precluded from acting for a client solely because another Lawyer in the Lawyer's practice has a close personal relationship with a person whose interests conflict with the interests of the Lawyer's client.
- 5.6.4 A Lawyer is not precluded from acting for a client because another Lawyer in his or her practice has a close personal relationship with the Lawyer acting for the opposing party.

Personal relationships

- 5.7 A Lawyer must not enter into an intimate personal relationship with a client where to do so would or could be inconsistent with the trust and confidence reposed by the client.
- 5.7.1 A Lawyer must not enter into an intimate personal relationship with a client where the Lawyer is representing the client in any domestic relations matter.

Gifts

- 5.8 A Lawyer must not accept a gift from a client if there is a possibility of the gift being or appearing to be inconsistent with the trust and confidence reposed by the client.
- 5.8.1 In any case where a Lawyer proposes to accept a gift of a significant amount or value, the Lawyer may do so only if the client has taken prior independent advice in respect of the matter.
- 5.8.2 This rule extends to gifts from clients to any person with whom the Lawyer has a close personal relationship or to any member of the Lawyer's practice.

Collateral rewards

- 5.9 A Lawyer must not directly or indirectly offer to, or receive from, a third party any reward or inducement in respect of any advice given, referrals made, products or services purchased, or any work done for a client. This rule does not apply to arrangements under which a third party has agreed to pay or contribute to normal fees payable by a client with the knowledge and consent of that client.

Drafting instruments

- 5.10A Lawyer must not draft or assist in drafting a provision of a will or other instrument under which the Lawyer may take a benefit other than a benefit normally attached to acting in a professional capacity in respect of the will or instrument unless, before the execution of the will or instrument, the person concerned has taken independent advice.

5.10.1 It is not a breach of this rule for a member of the Lawyer's practice (other than the proposed beneficiary) to assist in the drafting of the will or instrument if the testator (or donor) is related by blood, parental order issued under the Surrogacy Act 2021, adoption or marriage to the proposed beneficiary or has a close personal relationship with the proposed beneficiary.

5.10.2 This rule extends to the drafting of wills or other instruments under which a person with whom the Lawyer has a close personal relationship, or any member of his or her practice, may benefit.

Claims against Lawyer

- 5.11 When a Lawyer becomes aware that a client has or may have a claim against him or her, the Lawyer must immediately—
- (a) advise the client of that potential claim and to seek independent advice; and
 - (b) inform the client that he or she may no longer act unless the client, after receiving independent advice, gives informed consent.
- 5.12A Lawyer may resume acting for a former client where the matter in dispute has been resolved.

CHAPTER 6

Client interests

6. In acting for a client, a Lawyer must, within the bounds of the law and this Code, protect and promote the interests of the client to the exclusion of the interests of third parties.

Conflicting duties

6.1 A Lawyer must not act for more than one client on the same or a substantially related matter in any circumstances where there is a significant risk that the Lawyer may be unable to discharge the obligations owed to one or more of the clients. Without prejudice to the generality of the foregoing:

- (a) a Lawyer or Law Firm must not act for both developer and purchaser on any property transaction;
- (b) a Law Firm may not act for Claimant and Defendant in any legal proceedings or arbitration although individual Lawyers (who may practice from the same Law Firm) may appear as Counsel in the same proceedings or arbitration as long as the parties are represented by different Law Firms who instruct those Lawyers as Counsel only.

6.1.1 Subject to the above, a Lawyer may act for more than one party in respect of the same or a substantially related matter where the prior informed consent of all parties concerned is obtained.

6.1.2 Despite rule 6.1.1, if a Lawyer is acting for more than one client in respect of the same or a substantially related matter and it becomes apparent that the Lawyer will no longer be able to discharge the obligations owed to all of the clients for whom the Lawyer acts, the Lawyer must immediately inform each of the clients of this fact and terminate the retainers with all of the clients.

6.1.3 Despite rule 6.1.2, a Lawyer may continue to act for one client provided that the other clients concerned, after receiving independent advice, give informed consent to the Lawyer continuing to act for the client and no obligations to the consenting clients have been or will be breached.

6.2 Rule 6.1 applies with any necessary modifications whenever Lawyers who are members of the same practice act for more than one party.

6.3 An information barrier within a practice does not affect the application of, nor the obligation to comply with, rule 6.1 or 6.2.

Conflicting office

- 6.4 A Lawyer must not act in any matter where, by virtue of membership of a public authority by the Lawyer, a member of the Lawyer's practice, or a person with whom the Lawyer is in close personal relationship—
- (a) a significant risk of a conflict exists; or
 - (b) the Lawyer's ability to advise the client properly and independently is compromised.

Attempts to restrict representation through the use of Lawyer Panels or Otherwise

- 6.5 A Lawyer cannot be prevented by another client of his/her Law Firm or by any third party outside his/her practice ("the Relevant Person") from acting against the Relevant Person, simply on the basis that in an unrelated matter the Law Firm of which that Lawyer forms part has previously acted for the Relevant Person in circumstances when that particular Lawyer has not so acted in the representation of the Relevant Person.
- 6.6 Nothing in rule 6.5 shall restrict a Lawyer from voluntarily opting not to act for a client on a specific matter or to accept the representation of a potential client for the reasons set out in rules 4.1 and 4.2 of this Code.
- 6.7 Nothing in rule 6.5 prohibits arrangements by which individual Lawyers and Law Firms can enter into voluntary arrangements to provide legal services to a specific client on the basis that they will not undertake the legal representation of another party against that specific client.

CHAPTER 7**Disclosure and communication of information to clients**

7. Subject to his or her duty of confidentiality a Lawyer must promptly disclose to a client all information that the Lawyer has or acquires that is relevant to the matter in respect of which the Lawyer is engaged by the client. A Lawyer must ensure that where his or her duty of disclosure to one client conflicts with his or her duty of confidentiality to another existing client or former client, the duty of confidentiality takes precedence.

- 7.1 A Lawyer must take reasonable steps to ensure that a client understands the nature of the retainer and must keep the client informed about progress on the retainer. A Lawyer must also consult the client (not being another Lawyer acting in a

professional capacity) about the steps to be taken to implement the client's instructions.

- 7.2 A Lawyer must promptly answer requests for information or other inquiries from the client.
- 7.3 A Lawyer must not disclose information to the client if—
- (a) the client has given informed consent to the nondisclosure of particular information; or
 - (b) the disclosure would be likely to place at risk the health (including mental health) or safety of the client or any other person; or
 - (c) disclosure would be in breach of law or in breach of an order of the court;⁴ or
 - (d) disclosure would be in breach of a duty of confidentiality owed to an existing or former client;
 - (e) the information relates to a proposed retainer that the Lawyer has declined.
- 7.4 Except as required by law, a Lawyer must not agree to receive information on the basis that it will not be disclosed to his or her client unless the client has given informed consent to this.
- 7.5 An undertaking by a Lawyer to a third party (whether another client or not) to keep information confidential does not relieve the Lawyer of the duty to disclose that information to the client unless the client has given his or her informed consent to the undertaking and/or unless such disclosure is otherwise required by law.
- 7.6 Rules 7.1 to 7.6 apply where a Lawyer is instructed by another Lawyer on behalf of a client of the instructing Lawyer. In that event, unless otherwise requested, the Lawyer should deal with and report to the instructing Lawyer rather than the lay client.

CHAPTER 8

⁴ An example of disclosure prohibited by law is when the Lawyer makes a suspicious transaction report to the Gibraltar Financial Intelligence Unit ("GFIU") under the Proceeds of Crime Act. Disclosure is prohibited by this Code, for example, by rule 13.9.4 (which relates to the inadvertent release of privileged documents).

Confidential information

8. A Lawyer has a duty to protect and to hold in strict confidence all information concerning a client, the retainer, and the client's business and affairs acquired in the course of the professional relationship⁵ unless disclosure is required or permitted as set out in rules 8.2 and 8.3, respectively.

Duration of duty of confidence

8.1 A Lawyer's duty of confidence commences from the time a person makes a disclosure to the Lawyer in relation to a proposed retainer (whether or not a retainer eventuates). The duty of confidence continues indefinitely after the person concerned has ceased to be the Lawyer's client.

8.1.1 Following the death of a client or former client, the right to confidentiality passes to the client's personal representatives.

8.1.2 Where an incorporated client goes into receivership, liquidation, or administration, the duty of confidentiality owed to the corporation under the direction of the receiver, liquidator, or administrator remains but confidentiality relating to the business and affairs of shareholders and directors of the client (if the Lawyer acted for those parties) remains with those individuals.

When disclosure is required

8.2 A Lawyer must disclose confidential information where—

- (a) the information relates to the anticipated or proposed commission of a crime and the Lawyer is required by law to make the disclosure;
- (b) the Lawyer reasonably believes that disclosure is necessary to prevent a serious risk to the health or safety of any person;
- (c) disclosure is required by rule 2.8; or
- (d) disclosure is required by law, or by order of a court, or by virtue of the Lawyer's duty to the court.

⁵ Information acquired in the course of the professional relationship that may be widely known or a matter of public record (such as the address of the client, criminal convictions, or discharged bankruptcy) may nevertheless be regarded as held confidentially by the Lawyer.

8.3 Where a Lawyer discloses information under this rule, it must be only to an appropriate person and only to the extent reasonably necessary for the required purpose.

When disclosure is permitted

8.4 A Lawyer may disclose confidential information relating to the business or affairs of a client to a third party where—

- (a) the client expressly or impliedly⁶ authorises the disclosure (and where the information is confidential to more than one client, all clients have authorised the disclosure); or
- (b) the information relates to the anticipated commission of a crime or fraud and the Lawyer is permitted by law to make the disclosure; or
- (c) it is necessary to protect the interests of the client in circumstances where, due to incapacity, the client is unable effectively to protect his or her own interests; or
- (d) the Lawyer reasonably believes that the Lawyer's services have been used by the client to perpetrate or conceal a crime or fraud and disclosure is required to prevent, mitigate, or rectify substantial injury to the interests, property, or reputation of another person that is reasonably likely to result or has resulted from the client's commission of the crime or fraud; or
- (e) disclosure is necessary for the Lawyer to seek guidance from another Lawyer in respect of a proper course of professional conduct, and in such case that other Lawyer is bound to maintain the confidence of the client; or
- (f) disclosure is necessary for the effective operation of the Lawyer's practice including arranging insurance cover, reporting a claim or a circumstance which could give rise to a claim to an underwriter or collection of professional fees; or
- (g) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the Lawyer by the client.

⁶ Where a client is legally aided, the Lawyer should draw to the attention of the client the implied consent of the client that the Lawyer is permitted to disclose matters to the Supreme Court in accordance with any funding agreement.

8.5 Where the Lawyer discloses information under this rule, it should be only to the appropriate person or entity and only to the extent reasonably necessary for the permitted purpose.

8.6 In rule 8.4, “client” includes a former client.

Use of confidential information prohibited

8.7 A Lawyer must not use information that is confidential to a client (including a former client) for the benefit of any other person, including any other client of the Lawyer.⁷

8.7.1 A Lawyer must not act for a client (client A) who has an interest adverse to another client (client B) of the Lawyer or the Lawyer's practice where-

- (a) the practice or a Lawyer in the practice holds information confidential to client B; and
- (b) the Lawyer has a duty to disclose the confidential information because it is material to the matter upon which the Lawyer acts for client A.

8.7.2 Rule 8.7.1 is not breached where-

- (a) the Lawyer reasonably believes that client A understands the issues and gives informed consent; and
- (b) client B gives informed consent; and
- (c) there can be an effective information barrier between the Lawyer who holds the confidential information of client B and the Lawyer who proposed to act for client A; and
- (d) it is reasonable in all circumstances to act.

8.7.3 An information barrier is effective when, in all the circumstances, there is no more than a negligible risk that the confidential information in respect of client B will be or has been disclosed to client A or to any Lawyer acting for client A.

⁷ Where the right to confidence has passed to a third party (for example, where the client has died or is in liquidation), the party to whom the right has passed may authorise disclosure.

8.7.4 A Lawyer must not act for a client who or which has an interest adverse to a former client of the Lawyer or of any other member of the Lawyer's practice where—

- (a) the practice or a Lawyer in the practice holds information confidential to the former client; and
- (b) the Lawyer has a duty to disclose the confidential information because it is material to the client; and
- (c) disclosure of the confidential information would be likely to affect the interests of the former client adversely; and
- (d) there is a more than negligible risk of disclosure of the confidential information; and
- (e) the fiduciary obligation owed to the former client would be undermined.

8.7.5 Rule 8.7.4 is not breached where there is an effective information barrier between the Lawyer who holds the confidential information of the former client and the Lawyer who proposes to act for the new client.

8.7.6 An information barrier is effective when, in all the circumstances, there is a negligible risk that the confidential information in respect of the former client will be or has been disclosed to the new client or to any Lawyer acting for the new client.

8.7.7 Unless the Lawyer is unable to contact the former client, particulars of any information barrier must be disclosed to the former client prior to the Lawyer commencing to act for the new client.

8.7.8 For the purposes of this rule 8.7, confidential information is presumed to be held by a practice when any Lawyer who is a member of the practice has been a member of another practice that held the confidential information when that Lawyer was a member, unless the Lawyer concerned can demonstrate that he or she is not aware of the relevant confidential information.

Other confidential information

- 8.8 A Lawyer must not breach or risk breaching a duty of confidence owed by the Lawyer that has arisen outside a Lawyer-client relationship, whether to benefit the Lawyer, a client, or otherwise.⁸ In such case the Lawyer must not act for a client against a person in respect of whom confidential information relevant to the matter in issue is held.

CHAPTER 9

Fees

9. A Lawyer must not charge a client more than a fee that is fair and reasonable for the services provided, having regard to the interests of both client and Lawyer and having regard also to the factors set out in rule 9.1.

Reasonable fee factors

- 9.1 The factors to be taken into account in determining the reasonableness of a fee in respect of any service provided by a Lawyer to a client include the following-
- (a) the time and labour expended;
 - (b) the skill, specialised knowledge, and responsibility required to perform the services properly;
 - (c) the importance of the matter to the client and the results achieved;
 - (d) the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;
 - (e) the degree of risk assumed by the Lawyer in undertaking the services, including the amount or value of any property involved;
 - (f) the complexity of the matter and the difficulty or novelty of the questions involved;
 - (g) the experience, reputation, and ability of the Lawyer;
 - (h) the possibility that the acceptance of the particular retainer will preclude engagement of the Lawyer by other clients;

⁸ *Examples of such a duty might be duties owed by company directors and officers of the Crown.*

- (i) whether the fee is fixed or conditional (whether in litigation or otherwise);
- (j) any quote or estimate of fees given by the Lawyer;
- (k) any fee agreement (including a conditional or fixed fee agreement) entered into between the Lawyer and client;
- (l) the reasonable costs of running a practice;
- (m) the fee customarily charged in the market for similar legal services.

Fee agreements

- 9.2 The terms of any fee agreement between a Lawyer and client must be fair and reasonable, having regard to the interests of both client and Lawyer.

Fees in advance

- 9.3 A Lawyer who wishes to debit fees held in trust or to receive funds to cover fees in advance must comply with the requirements of such regulations as may apply and of the Solicitors' Account Rules.

Fee information and advice

- 9.4 A Lawyer must upon request provide an estimate of fees and inform the client promptly if it becomes apparent that the fee estimate is likely to be exceeded.
- 9.5 Where a client may be eligible for legal aid or legal assistance, a Lawyer must inform the client of this and whether or not the Lawyer is prepared to work on legally aided or legally assisted matters.

Final account

- 9.6 A Lawyer must render a final account to the client or person charged within a reasonable time of concluding a matter or the retainer being otherwise terminated. The Lawyer must provide with the account sufficient information to identify the matter, the period to which it relates, and the work undertaken.

Conditional fee agreements

- 9.7 A Lawyer may enter into a conditional fee agreement with a client only in the circumstances and in accordance with such requirements as may be prescribed by law and in any rules made under the Act or the Supreme Court Act.

Fee sharing

- 9.8 The sharing of a fee between Lawyers is permitted where all the Lawyers concerned have provided legal services in relation to the matter and the total fee is fair and reasonable.
- 9.9 The sharing of a fee between Lawyers is permitted if the agreement to share fees is incidental to the sale of a legal practice.

CHAPTER 10

Professional dealings

10. A Lawyer must promote and maintain proper standards of professionalism in the Lawyer's dealings.

Respect and courtesy

- 10.1 A Lawyer must treat other Lawyers with respect and courtesy.

Communicating with another Lawyer's client

- 10.2 A Lawyer acting in a matter must not communicate directly with a person whom the Lawyer knows is represented by another Lawyer in that matter except as authorised in this rule.
- 10.2.1 A Lawyer may communicate directly with a person whom the Lawyer knows is represented by another Lawyer where the matter is urgent and it is not possible to contact that person's Lawyer or an appropriate member of his or her practice. In communicating with the other Lawyer's client directly, the Lawyer must act fairly towards the other Lawyer's client at all times and must promptly notify the other Lawyer of the details of the communication.
- 10.2.2 A Lawyer may communicate directly with a person if the Lawyer reasonably believes that that person is no longer represented by another Lawyer. In that event, the other Lawyer must be notified in advance of the Lawyer's intention to communicate directly with that person.
- 10.2.3 A Lawyer may communicate directly with a former client who is represented by a new Lawyer for the purpose of confirming the client's

instructions and arranging for the orderly transfer of the client's matters to the new Lawyer.

10.2.4 A Lawyer may recommend to a client that the client make direct contact with any other party.

10.2.5 A Lawyer may communicate directly with a person represented by another Lawyer where the person consents to the communication and the other Lawyer has been given reasonable notice of the intended communication. In communicating with the other Lawyer's client directly, the Lawyer must act fairly towards the other Lawyer's client at all times.

10.2.6 A Lawyer may communicate directly with a person represented by another Lawyer where that communication is a notice or proceeding or other document that must be given to that person in order to be effective.

Undertakings

10.3 A Lawyer must honour all undertakings, whether written or oral, that he or she gives to any person in the course of practice. The only exception to ensuring the performance of the undertaking, is where the Lawyer is released by the recipient of the undertaking or by a court of competent jurisdiction.

10.3.1 This rule applies whether the undertaking is given by the Lawyer personally or by any other member of the Lawyer's practice. This rule applies unless the Lawyer giving the undertaking makes it clear that the undertaking is given on behalf of a client and that the Lawyer is not personally responsible for its performance.

10.3.2 A Lawyer who receives funds on terms requiring the Lawyer to hold the funds in a trust account as a stakeholder must adhere strictly to those terms and disburse the funds only in accordance with them.

Payments

10.4 A Lawyer must not—

- (a) stop a client account cheque drawn on the client account of the practice of which the Lawyer is a member, or a bank cheque, which in either case is payable to another practice; or
- (b) cancel, reverse, or amend an order for payment made to another practice by way of electronic transfer from the client account of the practice of

which the Lawyer is a member once the cheque or printed verification of the electronic transfer instructions has been handed or dispatched to the payee.

10.5 Rule 10.4 does not apply where the payment—

- (a) is induced by fraud; or
- (b) arises from a mistake in the identity of the payee or the payee's client; or
- (c) is made in other circumstances that are of an exceptional nature.

10.6 Where a Lawyer stops a payment or cancels, reverses, or amends an order for payment, the Lawyer must immediately advise the payee of the action that has been taken.

Fees of other Lawyers

10.7 A Lawyer who, acting in a professional capacity, instructs another Lawyer, must pay the other Lawyer's account promptly and in full unless agreement to the contrary is reached, or he/she has made clear on instructing the other Lawyer that the account will be paid by the client directly or via the instructing Lawyer or the fee is promptly disputed through proper professional channels. This rule applies to the accounts of foreign Lawyers.

10.7.1 Where the instructing Lawyer and the Lawyer undertaking the work have agreed that the instructing Lawyer's client is to be solely responsible for paying the Lawyer's account then (unless agreed otherwise) the instructing Lawyer must use all reasonable endeavours to ensure the client pays the account. The instructing Lawyer must promptly inform the instructed Lawyer if it appears that the client will be unable or unwilling to pay the account.

10.7.2 An instructing Lawyer may sue for and recover from the party chargeable any fees paid or payable by the instructing Lawyer to a Lawyer instructed by him or her with the client's authority in relation to a client's affairs, if those fees are shown as a disbursement in a bill of costs rendered by the Lawyer to the party chargeable.

Making recordings

10.8 A Lawyer must not, in the course of his or her professional activity, make a video or sound recording of any person without first informing the person of the

Lawyer's intention to do so, other than for CCTV recording for the purposes of security and detection of crime.

CHAPTER 11

Proper professional practice

11. A Lawyer's practice must be administered in a manner that ensures that the duties to the court and existing, prospective, and former clients are adhered to, and that the reputation of the legal profession is preserved.

Misleading and deceptive conduct

11.1 A Lawyer must not engage in conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of the Lawyer's practice.

Direct solicitation

11.2 A Lawyer must not directly contact a prospective client—

- (a) in a way that is intrusive, offensive, or inappropriate; or
- (b) if the Lawyer knows or should know that the physical, emotional, or mental state of the person is such that the person could not exercise reasonable judgement in engaging a Lawyer, or the Lawyer is aware that the prospective client does not wish to be contacted by the Lawyer.

Supervision and management

11.3 A Lawyer in practice on his or her own account or in partnership with others must ensure that the conduct of his or her practice (including separate places of business) and the conduct of employees is at all times competently supervised and managed by a Lawyer who is qualified to practise on his or her own account.

Prevention of crime or fraud

11.4 A Lawyer must take all reasonable steps to prevent any person perpetrating a crime or fraud through the Lawyer's practice. This includes taking reasonable steps to ensure the security of and access to electronic systems and passwords.

11.4.1 The protection of passwords and systems will include the protection of any digital certificates and associated passwords, and passwords,

usernames and personal identification numbers relating to electronic banking.

- 11.4.2 A Lawyer must adhere to the relevant provisions of the Crimes Act 2011 and the Proceeds of Crime Act 2015 and any subsidiary legislation made thereunder.

Accountability

- 11.5 Authorised Persons must keep up to date with and follow the law and regulatory arrangements governing them.
- 11.6 Authorised Persons must be able to justify their decisions and actions in order to demonstrate compliance with their obligations under the LSRA's regulatory arrangements.

Co-operation with the LSRA

- 11.7 An Authorised Person must cooperate with the LSRA and any other regulators and bodies who may have a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 11.8 An Authorised Person must respond promptly to the LSRA and:
- (a) provide full and accurate explanations, information and documents in response to any request or requirement; and
 - (b) ensure that relevant information held by them, or by third parties carrying out functions on the Authorised Person's behalf which are critical to the delivery of their Legal Services, as are available for inspection by the LSRA.
- 11.9 An Authorised Person must not attempt to prevent anyone from providing information to the LSRA or any other body exercising regulatory, supervisory, investigatory or prosecutory functions in the public interest.
- 11.10 An Authorised Person must notify the LSRA promptly if:
- (a) he or she is subject to any criminal charge, conviction or caution;
 - (b) a relevant insolvency event occurs or a judgment debt remains outstanding in relation to that Authorised Person; or

- (c) he or she becomes aware of any material changes to information previously provided to the LSRA about him or her or their practice, including any change to information recorded in the register; or
 - (d) he or she becomes aware that information provided to the LSRA by the Authorised Person or on his or her behalf, about the Authorised Person or their practice, is or may be false, misleading, incomplete or inaccurate; or
 - (e) he or she becomes aware of any other matter in relation to which the LSRA may issue guidance; or
 - (f) he or she becomes aware of any matter which is or may be relevant to the LSRA's assessment as to whether he or she or a non-Authorised Person who has been approved or is seeking approval as a director or a shareholder of a Law Firm is a fit and proper person.
- 11.11 An Authorised Person must report promptly to the LSRA any facts or matters he or she reasonably believes are capable of amounting to a serious breach of regulatory arrangements by him or herself, or any other Authorised Person or other person.
- 11.12 Notwithstanding rule 11.11, an Authorised Person must inform the LSRA promptly of any facts or matters that he or she reasonably believes should be brought to its attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers.
- 11.13 An Authorised Person must not subject any person to detrimental treatment for making or proposing to make a report to the LSRA or for providing or proposing to provide information based on a reasonably held belief under paragraphs 11.11 or 11.12, irrespective of whether the LSRA subsequently investigates or takes action in relation to the facts or matters in question.
- 11.14 An Authorised Person must act promptly to take any remedial action requested by the LSRA. If requested to do so by the LSRA the Authorised Person must investigate whether there have been any serious breaches that should be reported to the LSRA.
- 11.15 An Authorised Person must be honest and open with clients if things go wrong and if a client suffers loss or harm, the Authorised Person must put matters right where possible and explain fully and promptly what has happened and the likely impact. If requested to do so by the LSRA, the Authorised Person must investigate whether anyone may have a claim against them, provide the LSRA which a report

on the outcome of the investigation and notify relevant persons that they may have such a claim.

11.16 Any obligation under this section or otherwise to notify or provide information to the LSRA will be satisfied in relation to an Authorised Person where the Authorised Person provides information to the Law Firm's compliance officer as and where appropriate, on the understanding that they will do so.

11.17 In this regulation, a "relevant insolvency event" occurs –

- (i) in relation to an individual if:
 - (a) the individual is adjudged bankrupt;
 - (b) the individual has entered into an individual voluntary arrangement under the Insolvency Act 2011.
- (ii) in relation to a body if:
 - (a) a resolution for a voluntary winding up of the body is passed without a declaration of solvency under section 362 of the Companies Act 2014;
 - (b) the body enters administration or an administrative receiver is appointed within the meaning of the Insolvency Act 2011;
 - (c) the body has entered into a company voluntary arrangement within the meaning of the Insolvency Act 2011;
 - (d) an order for the winding up of the body is made;
 - (e) the body is an *overseas company* registered outside Gibraltar and the body is subject to an event in its country of incorporation analogous to an event as set out in paragraphs (a) to (e) above

CHAPTER 12

Third parties

12 A Lawyer must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect, and courtesy.

12.1 When a Lawyer knows that a person is self-represented, the Lawyer should normally inform that person of the right to take legal advice.

Third party fees

12.2 Where a Lawyer instructs a third party on behalf of a client to render services in the absence of an arrangement to the contrary, the Lawyer is personally responsible for payment of the third party's fees, costs, and expenses.

12.3 Where a client is legally aided or assisted a Lawyer must inform any third party of any constraints on payments that may arise.

CHAPTER 13**Lawyers as officers of court**

13. The overriding duty of a Lawyer acting in litigation is to the court concerned. Subject to this, the Lawyer has a duty to act in the best interests of his or her client without regard for the personal interests of the Lawyer.

Duty of fidelity to court

13.1 A Lawyer has an absolute duty of honesty to the court and must not mislead or deceive the court.

Protection of court processes

13.2 A Lawyer must not act in a way that undermines the processes of the court or the dignity of the judiciary.

13.2.1 A Lawyer must treat others involved in court processes with respect.

13.2.2 A Lawyer must not discuss any case or matter before the court with any judicial officer involved in the proceeding either formally or informally outside of the rules of court that permit matters to be raised in the absence of the other party (such as in cases of urgency or where an ex parte application is justified). In cases of doubt, the Lawyers for other parties (or if a party is not represented, then the party concerned) should be informed of any matters being brought before the court.

13.2.3 A Lawyer must not have contact with jurors before a verdict and must not initiate contact with jurors after the verdict where the contact is likely to bring the system of justice into disrepute.

13.2.4 A Lawyer must not, during the conduct of a proceeding, engage in any relationship with a witness that may have the effect or appear to have the effect of interfering with the fair disposition of the proceeding.

Informed instructions

13.3 Subject to the Lawyer's overriding duty to the court, a Lawyer must obtain and follow a client's instructions on significant decisions in respect of the conduct of litigation. Those instructions should be taken after the client is informed by the Lawyer of the nature of the decisions to be made and the consequences of them.

Alternatives to litigation

13.4 A Lawyer assisting a client with the resolution of a dispute must keep the client advised of alternatives to litigation that are reasonably available (unless the Lawyer believes on reasonable grounds that the client already has an understanding of those alternatives) to enable the client to make informed decisions regarding the resolution of the dispute.

Independence in litigation

13.5 A Lawyer engaged in litigation for a client must maintain his or her independence at all times.

13.5.1 A Lawyer must not act in a proceeding where it is reasonably foreseeable that the Lawyer will be required to give evidence of a contentious nature in those proceedings.

13.5.2 If, after a Lawyer has commenced acting in a proceeding, it becomes apparent that the Lawyer or a member of the Lawyer's practice is to give evidence of a contentious nature, the Lawyer must immediately inform the court and, unless the court directs otherwise, cease acting PROVIDED THAT a Lawyer may act in a proceeding or conduct the advocacy if another member of the same Law Firm has made a witness statement or sworn affidavit evidence in support of the party to the proceedings or is the party to the proceedings.

13.5.3 A Lawyer must not act in a proceeding if the conduct or advice of the Lawyer or of another member of the Lawyer's practice is in issue in the matter before the court. This rule does not apply where the Lawyer is acting for himself or herself, or for the member of the practice whose actions are in issue.

13.5.4 A Lawyer must not make submissions or express views to a court on any material evidence or material issue in a case in terms that convey or appear to convey the Lawyer's personal opinion on the merits of that evidence or issue.

13.6 Except to the extent that another Law Firm are the Lawyers on the record in the particular dispute and the relevant Lawyer is instructed by another Law Firm, a Lawyer or Lawyers who are members of the same Law Firm must not act in a dispute for two or more parties whose interests are not the same or where the Lawyer or practice will be unable to ensure the discharge of any duty owed to any party to the dispute.

13.6.1 If, having commenced to act for more than one party to a dispute, it becomes apparent that the Lawyer or Lawyers who are members of the same Law Firm will not be able to ensure the discharge of all duties owed to the respective parties, the Lawyer or practice must cease acting for all parties immediately.

13.6.2 A Lawyer or Lawyers who are members of the same Law Firm may, however, continue to act for one client provided that the other party, after receiving independent advice, gives informed consent at the time the dispute arises to the Lawyer or Law Firm continuing to act for the other party and no duties to the consenting party have been or will be breached.

13.6.3 In particular and without prejudice to the generality of 13.6.1 and 13.6.2, a Lawyer who is a member of a Law Firm consisting of two or more Lawyers ("Law Firm A") may not be instructed to act as a barrister or advocate by another Law Firm for a party whose interests conflict or may conflict with those of an existing or former client of r Law Firm A unless that existing or former client's rights of confidentiality and generally are adequately safeguarded and protected by, for example, and without limitation, the provision of adequate information barriers within Law Firm A to protect the rights of the existing or former client.

13.7 For the avoidance of doubt, nothing in rule 13.6 shall oblige a Lawyer or Law Firm to allow an arrangement which complies with the safeguards contained in rule 13.6, so that the practice is free, to determine that such arrangements not be allowed.

Lawyer as witness

13.8 Where a Lawyer is approached to give evidence in a court proceeding that relates to a matter in which the Lawyer acted, the Lawyer must not be obstructive and must, subject to the rules of legal professional privilege and the duty of confidence, provide all information relevant to the matter in issue to any party to the proceeding and to the court that the Lawyer would be obliged to provide if summoned as a witness.

Reputation of other parties

13.9 A Lawyer engaged in litigation must not attack a person's reputation without good cause in court or in documents filed in court proceedings.

13.9.1 A Lawyer must not be a party to the filing of any document in court alleging fraud, dishonesty, undue influence, duress, or other reprehensible conduct, unless the Lawyer has taken appropriate steps to ensure that reasonable grounds for making the allegation exist.

13.9.2 Allegations should not be made against persons not involved in the proceeding unless they are necessary to the conduct of the litigation and reasonable steps are taken to ensure the accuracy of the allegations and, where appropriate, the protection of the privacy of those persons.

Disclosure and privilege

13.10 A Lawyer who acts for a party in a proceeding must, to the best of the Lawyer's ability, ensure that disclosure obligations are fully complied with by the Lawyer's client and that the rules of legal professional privilege are adhered to. A Lawyer must not continue to act if, to the Lawyer's knowledge, there has been a breach of disclosure obligations by the Lawyer's client and the client refuses to remedy that breach.

13.10.1 A Lawyer acting for a litigant must advise the client of the scope of the client's obligations in respect of disclosure at the outset of the retainer, including the continuing nature of those obligations up to and including the time of final judgment, and that disclosed documents may be used only for the purposes of the litigation and not for any other purpose. The Lawyer must, to the best of the Lawyer's ability, ensure that the client understands and fulfils those obligations.

13.10.2 A Lawyer must not claim privilege on behalf of a client unless there are proper grounds for doing so.

13.10.3 A Lawyer must not, other than by application to the court, seek to obtain on behalf of a client information or documents that the Lawyer knows to be

privileged unless every person holding that privilege, after having been advised of the existence of the privilege and consequences of waiver, waives that privilege.

- 13.10.4 If a Lawyer becomes aware that privileged information or documents have been inadvertently released in circumstances where privilege has not been waived, the Lawyer must not disclose the contents of the material to a client, must inform the other Lawyer (or litigant if unrepresented) of the release, and must return any documents forthwith. This rule applies despite the Code relating to disclosure contained in chapter 7.

Presenting evidence and witnesses

13.11 A Lawyer must not adduce evidence knowing it to be false.

- 13.11.1 If a witness (not being the Lawyer's client) gives material evidence in support of the Lawyer's client's case that the Lawyer knows to be false, the Lawyer must, in the absence of a retraction, refuse to examine the witness further on that matter. If the witness is the client of the Lawyer, the Lawyer must, in the absence of a retraction, cease to act for that client.
- 13.11.2 A Lawyer cross-examining a witness must not put any proposition to a witness that is either not supported by reasonable instructions or that lacks foundation by reference to credible information in the Lawyer's possession.
- 13.11.3 A Lawyer must not put questions regarding allegations against third parties to a witness when the Lawyer knows that the witness does not have the necessary information or knowledge to answer questions in respect of those allegations, or where there is no justifiable foundation for the allegations.
- 13.11.4 A Lawyer engaged in any proceeding does not have the sole right to call or discuss the case with a witness. A Lawyer acting for one party may interview a witness or prospective witness at any stage prior to the hearing, whether or not the witness has been interviewed by the Lawyer acting for the other party.
- 13.11.5 A Lawyer must not treat a witness or potential witness in an overbearing or misleading way and if asked must inform a witness or potential witness of his or her right to decline to be interviewed.
- 13.11.6 A Lawyer must not discourage a witness or potential witness from discussing the case with the Lawyer acting for the other party or otherwise obstruct access to that witness or potential witness by the Lawyer acting for the other

party. A Lawyer is, however, entitled to inform a witness or potential witness of the right to decline to be interviewed by the other party and of any relevant legal obligations.

- 13.11.7 A Lawyer must not communicate with a witness during the course of cross-examination or re-examination of that witness or between the cross-examination and the re-examination, except where good reason exists and with the consent of either the judge or the Lawyers for all other parties (or, where a party is unrepresented, the consent of that party). This applies during adjournments of the hearing.
- 13.11.8 A Lawyer must not suggest to a witness or potential witness, whether expressly or impliedly, that false or misleading evidence ought to be given or that evidence should be suppressed.
- 13.11.9 A Lawyer who retains an expert witness must take reasonable steps to ensure that the expert's independence is preserved and must advise the witness of his or her duty to the court.
- 13.11.10 A Lawyer must take reasonable steps to ensure that the remuneration of an expert witness is not dependent upon the outcome of the litigation.
- 13.11.11 If an expert witness has, to a Lawyer's knowledge, been retained by another party, the Lawyer must not, without the prior consent of the Lawyer acting for the other party, approach the expert witness.

Submissions on law

- 13.12 The duty to the court includes a duty to put all relevant and significant law known to the Lawyer before the court, whether this material supports the client's case or not. This duty continues until final judgment is given in the proceeding.

Duties of prosecution Lawyer

- 13.13 A prosecuting Lawyer must act fairly and impartially at all times and in doing this must—
- (a) comply with all obligations concerning disclosure to the defence of evidence material to the prosecution and the defence; and
 - (b) present the prosecution case fully and fairly and with professional detachment; and

- (c) avoid unduly emotive language and inflaming bias or prejudice against an accused person; and
- (d) act in accordance with any ethical obligations that apply specifically to prosecutors acting for the Crown.

Duties of defence Lawyer

13.14 A defence Lawyer must protect his or her client so far as is possible from being convicted (except upon admissible evidence sufficient to support a conviction for the offence with which the client is charged) and in doing so must—

- (a) put the prosecution to proof in obtaining a conviction regardless of any personal belief or opinion of the Lawyer as to his or her client's guilt or innocence; and
- (b) put before the court any proper defence in accordance with his or her client's instructions –

but must not mislead the court in any way.

13.14.1 When taking instructions from a client, including instructions on a plea and whether or not to give evidence, a defence Lawyer must ensure that his or her client is fully informed on all relevant implications of his or her decision and the defence Lawyer must then act in accordance with the client's instructions.

13.14.2 If at any time before or during a defended trial a client makes a clear confession of guilt to his or her defence Lawyer, the Lawyer may continue to act only if the plea is changed to guilty or the Lawyer—

- (a) does not put forward a case inconsistent with the confession; and
- (b) continues to put the prosecution to proof and, if appropriate, asserts that the prosecution evidence is inadequate to justify a verdict of guilty; and
- (c) does not raise any matter that suggests the client has an affirmative defence such as an alibi, but may proceed with a defence based on a special case such as insanity, if such a course appears in the Lawyer's professional opinion to be available.

- 13.14.3 Where a defence Lawyer is told by his or her client that he or she did not commit the offence, or where a defence Lawyer believes that on the facts there should be an acquittal, but for particular reasons the client wishes to plead guilty, the defence Lawyer may continue to represent the client, but only after warning the client of the consequences and advising the client that the Lawyer can act after the entry of the plea only on the basis that the offence has been admitted, and put forward factors in mitigation.
- 13.14.4 A defence Lawyer must not attribute to another person the offence with which his or her client is charged unless it is necessary for the conduct of the defence to do so and the allegation is justified by facts or circumstances arising out of the evidence in the case or reasonable inferences drawn from them.
- 13.14.5 A defence Lawyer must not disclose a client's previous convictions without the client's authority.

CHAPTER 14

Lawyers and Foreign Lawyers as In-House Lawyers on Part 5 of the Register

14. The provisions of this Code shall be applicable to such persons (herein referred to as "In-house Lawyers") except for any provisions which concern private practice.

14.1 Additionally the following provisions are applicable to In-house Lawyers:

- 14.1.1 When an In-house Lawyer provides legal services to the non-Lawyer by whom he or she is engaged, his or her employer, he or she must do so pursuant to a Lawyer-client relationship.
- 14.1.2 An In-house Lawyer must not enter into a contract of employment or accept any instruction or direction from his employer which prevents or purports to prevent compliance with any of the obligations or duties imposed by the Act or any other Codes or rules under the Act or which would require the In-house Lawyer to breach any of the obligations or duties imposed by the Act or this Code or any other code or rules made under the Act or that arise by virtue of the Lawyer-client relationship.
- 14.1.3 In the case of a Trade Union or other association whose rules expressly allow an In-house Lawyer to advise and act for its members for their personal benefit, an in-house Lawyer may provide legal services for the

benefit of its members individually, jointly or collectively, as the case may be.

14.1.4 Where an In-house Lawyer is engaged by a company, the in-house Lawyer may provide regulated services to any other company in the same group. In this rule, “group” has the same meaning as in the Companies Act 2014. An in-house lawyer may not provide legal services to a client or a director or employee of his employer.

14.2 An In-house lawyer who has been approved, enrolled and admitted as a barrister or solicitor of the Supreme Court and who thereby has limited right of audience and to conduct litigation as provided by the Act must comply with all the provisions of the Act and this Code that apply to barristers or solicitors apart from Chapter 4 (Availability to the Public) and Chapter 9 (Fees).

14.3 An In-house Lawyer may give independent advice to his or her employer.

14.4 The Legal Services Regulatory Authority does not regulate the Royal Gibraltar Regiment or any other armed forces, but any Authorised Person working for such organisation is bound to comply with the provisions of the Code of Conduct in the same way as an In-house Lawyer.

CHAPTER 15

Crown Lawyers on Part 3 of the Register

15. For the avoidance of doubt, this Code shall be applicable to such persons except for any provisions of this Code that deal exclusively with matters concerning private practice or private employment.

CHAPTER 16

Legal Executives on Part 4 of the Register

16.1 The provisions of this Code shall be applicable to such persons to the extent that any such provisions are relevant to the provision of legal services by such a person pursuant to the Act.

16.2 For the avoidance of doubt, when such a person is exercising the limited rights of audience and conduct of litigation as provided by the Act he does so as an officer of the Court and must comply with the provisions of this Code concerning the conduct and duties of officers of the Court and such other provisions of the Act and the Code which apply when providing those legal services.

CHAPTER 17**Legal Executives and Other Persons on Part 6 of the Register**

17. The provisions of this Code shall be applicable to such persons to the extent any such provisions are relevant to the provision of legal services by such persons pursuant to the Act.

CHAPTER 18**Law Costs Draftsmen on Part 7 of the Register**

18. The provisions of this Code shall be applicable to persons registered on Part 7 of the register to the extent that the provisions are relevant to the provision of the legal services by such persons pursuant to the Act.

CHAPTER 19**Foreign Counsel on Part 2 and European/EEA lawyers on Part 8 of the Register**

19. For the avoidance of doubt this Code shall be applicable to such persons registered on Parts 2 and 8 of the Register except for any provisions of this Code that deal exclusively with matters concerning Lawyers on Parts 1 or 5 of the Register.

CHAPTER 20**Law Firms on Part 9 of the Register**

20. Law Firms shall ensure that they comply with such requirements placed on Law Firms by the Act, this Code or such other Codes, Rules or Regulations made under the Act that place duties on Law Firms.