

Table 2.3. *Key procedural rules about investigating lawyer misconduct in Greater China*

	HKSAR	
PRC	<i>Law Society of Hong Kong</i>	Taiwan
<i>All China Law Association</i>	<i>Hong Kong Bar Association</i>	<i>Taiwan Bar Association</i>
<i>List of relevant laws</i>		
<i>Lawyers' Law of the People's Republic of China – 2017</i>	<i>Legal Practitioners' Ordinance</i>	<i>Attorney Regulation Act, 2010</i>
<i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014</i>	[updated 2020 – applies to all solicitors and barristers in Hong Kong]	<i>Taiwan Bar Association, Code of Ethics</i>
[In the PRC, different sets of rules control lawyers' behaviour. These rules are discussed generally in this table and in Section 2.8, at Table 2.4. Specific rules that deal with specific issues in legal ethics are covered in later chapters, especially criminal cases (Ch. 5), confidentiality (Ch. 6) and conflicts of interest (Ch. 7)]	<i>Law Society of Hong Kong, Guide to Professional Conduct 2013</i> (for solicitors) and <i>The Code of Conduct of The Bar of The Hong Kong SAR</i> (' <i>Bar Code of Conduct</i> ' updated 2020 – for barristers)	[All attorneys are controlled by the Attorney Regulation Act, which in turn gives all disciplinary rule-making power to the Taiwan Bar Association]
	<i>The Professional Conduct of Lawyers in Hong Kong</i> , Lexis-Nexis, Hong Kong (loose leaf), Division 15, 'Solicitors and the Disciplinary Process', contains a thorough examination of this topic.	
<i>Definitions of misconduct</i>		
<i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014.</i>	<i>The Legal Practitioners' Ordinance</i> s 2(2) states that '... any conduct of a trainee solicitor or employee of a solicitor which would reasonably be regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute	<i>Attorney Regulation Act</i>
Ch. 1, Article 3 defines 'misconduct' exhaustively as '... violations of the laws, regulations, charters, all business norms established by the		Article 39 An attorney is subject to disciplinary action who: 1. has violated provisions set forth in the third sentence of Article 20, Article 21, Article 22, Article

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PRC <i>All China Law Association</i>	HKSAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Taiwan <i>Taiwan Bar Association</i>
Lawyers' Association, publicly known codes of conduct for the legal industry that members commit while conducting their work as lawyers or while conducting affairs related to handling or performing work as lawyers, <i>as well as</i> acts committed by members outside of their professional work as lawyers that gravely harm the image of the legal industry, or acts violating basic conditions for applying to work as lawyers such as acts contrary to good moral conduct.'	shall be deemed misconduct'. The Bar Code of Conduct 4.1 states that it is the duty of every barrister . . . (b) not to engage in conduct (whether in pursuit of his profession or otherwise . . . which is: (i) dishonest or otherwise discreditable to a barrister; (ii) likely to bring the profession of barrister into disrepute or otherwise diminish public confidence in the profession of barrister; or (iii) prejudicial to the administration of justice or otherwise likely to diminish public confidence in the administration of justice; (c) to observe the ethics and etiquette of his profession; and (d) to be competent. . . Under the Bar Code of Conduct 4.2 , 'serious failure' to comply with para 4.1 shall be professional misconduct (punishable under the	24, Article 26, any of Articles 28–37, of [the Attorney Regulation Act]; or, 2. who has been convicted of a crime except 'non-intentional' crimes. 3. who seriously violates attorney code of ethics or the Articles of Incorporation of the Bar Association in which they are members.

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	Legal Practitioners' Ordinance), and under 4.3, less serious conduct (as decided by the Bar Council) is a 'breach of proper professional standards' and punishable by admonition and advice as to future conduct.	
	The Bar Code of Conduct s4.4 declares that a barrister's deceit or failure to disclose their relevant dishonest conduct occurring prior to their admission, as professional misconduct or a breach of proper professional standards.	
Penalties		
<i>Lawyers' Law of the People's Republic of China – 2017</i> Article 47 For any of the following conduct of a lawyer, the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government shall give a warning and may impose a fine of not more than RMB 5,000;	<i>The Legal Practitioners' Ordinance</i> s9AB contains a procedure for summary disposal of an offence if the solicitor admits fault and pays a fixed fine and the Law Society's costs. The <i>Legal Practitioners' Ordinance</i> s10(2) allows a Solicitors Disciplinary Tribunal (and s37 contains similar provisions with respect to Barristers' Disciplinary Tribunals) power to make such	<i>Attorney Regulation Act</i> Article 44 Disciplinary action can be one of: 1. a warning; 2. a reprimand; 3. suspension of the right to practise law for a period not exceeding two years; 4. Disbarment. <i>Code of Ethics</i> Article 49 Where a lawyer has violated this Code,

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PRC <i>All China Law Association</i>	HKSAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Taiwan <i>Taiwan Bar Association</i>
if there is any illegal income, shall confiscate the illegal income; and if the circumstances are serious, shall impose a penalty of cessation of practice for not more than three months: . . .	order as it thinks fit including imposing a fine no greater than HK\$500,000, suspension from practice and striking off. Sanctions can be imposed if there is a breach of a statutory duty, LSHK Practice Directions or the LSHK Guide to Professional Conduct The Tribunal need not make a finding of professional misconduct.	the bar association to which he/she belongs shall review the violation and take one of the following actions:
3. Representing both parties in a same case, or representing a client in a legal affair that has any conflict of interest with himself or his close relative; . . .		1. Counsel him/her.
5. Refusing to perform his legal aid obligation.		2. Give him/her a warning.
Article 48 For any of the following conduct of a lawyer, the justice administrative authority . . . shall give a warning and may impose a fine of not more than RMB 10,000;	The <i>Legal Practitioners' Ordinance</i> s11 (for solicitors) and s36 for barristers, allows a tribunal to make additional orders to assist its proper functions.	3. Where the violation is a serious one, forward his/her case to the relevant agency and request for action.
if there is any illegal income, shall confiscate the illegal income; and if the circumstances are serious, shall impose a penalty of cessation of practice for not less than three months but not more than six months:		
1. Accepting authorization or charging fees privately, or accepting		

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property or any other
benefit from a client;

2. Refusing to defend or
represent a client, or
failing to appear before
court in litigation or
arbitration, without good
reasons, after accepting
authorization; . . .

4. Divulging a trade secret
or personal privacy.

Article 49

For any of the following
conduct of a lawyer, the
justice administrative
authority . . . shall
impose a penalty of
cessation of practice for
not less than six months
but not more than one
year and may impose a
fine of not more than
RMB 50,000;

and if there is any illegal
income, shall confiscate
the illegal income;

if the circumstances are
serious, the justice
administrative authority of
a province, autonomous
region or municipality
directly under the
Central Government
shall revoke his lawyer's
practicing certificate;

and if a crime is
constituted, he shall be
pursued for criminal
liability:

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PRC	HKSAR	Taiwan
<i>All China Law Association</i>	<i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	<i>Taiwan Bar Association</i>
<ol style="list-style-type: none"> 1. Meeting a judge, prosecutor, arbitrator or any other relevant staffer in violation of provisions . . . 2. Bribing, bribing as an intermediary or instigating or inducing a party to bribe a judge, prosecutor, arbitrator or any other relevant staffer . . . 4. Deliberately providing false evidence or threatening or inducing others to provide false evidence, or obstructing the opposite party's legal obtaining of evidence; . . . 8. Delivering a speech that compromising the national security, maliciously defaming others or seriously disrupting the court order; or 9. Divulging a national secret. <p>Where a criminal penalty is imposed on a lawyer for an intentional crime, the justice administrative authority . . . shall revoke his lawyer's practising certificate.</p> <p><i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014:</i></p>		

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Articles 14, 18 and 19:

Disciplinary
punishments range from
admonition to warning,
circulation of a criticism
notice, public censure,
and suspension of part or
all of the rights of
membership for 6
months–1 year and
finally, cancellation of
membership credentials.

Less serious or first-time
offences are more likely
to receive lighter
penalties.

Article 15 allows other
orders to compel lawyers
to return fees and
documents and attend
special training.

Article 48 refers to lawyers'
activities that threaten
national security.

Articles 96–98 allow
mediation to occur at
any time between the
parties, but the
disciplinary committee
can proceed to
punishment even if the
mediation is successful
and the complainant
withdraws their
complaint.

Successful mediation may
however, allow a reduced
disciplinary penalty.

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PRC <i>All China Law Association</i>	HKSAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Taiwan <i>Taiwan Bar Association</i>
<i>Complaints</i>		
<p><i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014.</i></p> <p>Article 4:</p> <p>[A] Lawyers' Association can investigate a lawyer even if no complaint has been received.</p>	<p>Articles of Association of the Law Society of Hong Kong, Article 18(d)</p> <p>empowers the Law Society to investigate any charge of misconduct against any solicitor (whether a member of the Law Society of Hong Kong or not), or an employee of a solicitor, and to prosecute any disciplinary proceedings.</p> <p>Complaints are made in writing on a complaint form, but the Standing Committee on Compliance can investigate on its own motion (without a complaint being received).</p> <p>The Legal Practitioners' Ordinance §35 provides, in respect of complaints to the Bar Council about a barrister's conduct, that a complainant may apply to the Chief Judge for a complaint to be referred to a Barristers' Disciplinary Tribunal, if the Bar Council itself does not take this action within 6 months of receiving that complaint.</p>	<p><i>Attorney Regulation Act</i></p> <p>Article 40</p> <p>Disciplinary action against an attorney may be initiated by the High Court Prosecutors Office or subdivision thereof, or by a District Court Prosecutors Office. Upon initiation the case will be forwarded to the Bar Association Disciplinary Committee having jurisdiction over the attorney . . .</p> <p>A Bar Association may through a resolution reached at a General Meeting or at a Joint Executive Supervisor Meeting refer an attorney for disciplinary proceedings to the Attorneys' Discipline Committee having jurisdiction.</p>

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<i>Investigations and disciplinary panels</i>		
<i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014.</i>	<i>Under the Legal Practitioners' Ordinance</i>	<i>Attorney Regulation Act</i>
Article 5: The Disciplinary Committee must observe the principles of objectivity and fairness.	s9–9A investigations are delegated to the Conduct Section of the Compliance Department of the LSHK;	Article 41
<i>Lawyers' Law of the People's Republic of China – 2017</i>	the adjudication of complaints is delegated to a Law Society of Hong Kong Investigation Committee; and the review of Investigation Committee decisions and the institution of disciplinary proceedings is delegated to the Law Society of Hong Kong Standing Committee on Compliance.	Attorney Disciplinary Committees shall be composed of three High Court judges, one High Court prosecutor from High Court Prosecutors Office in parallel with said High Court, and five attorneys.
Article 37		Such Attorney Disciplinary Committees shall elect one of their members to act as the Chief Commissioner.
The personal rights of a lawyer in practicing law shall not be infringed upon.		
The representation or defence opinions presented in court by a lawyer shall not be subject to legal prosecution, however, except speeches compromising the national security, maliciously defaming others or seriously disrupting the court order.	<i>The Legal Practitioners Ordinance, s9</i>	
Where a lawyer is suspected of a crime during participation in a legal proceeding, the criminal investigation authority shall notify the law firm employing the lawyer or the bar association to which the	establishes a Solicitors' Disciplinary Tribunal Panel. The Panel consists of not more than 120 practising solicitors of at least 10 years' standing, not more than 10 foreign lawyers and not more than 60 lay members. All the members of the Panel and its Convenor are appointed by the Chief Justice of Hong Kong.	

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<p>lawyer belongs in a timely manner; and where a lawyer is legally detained or arrested, the criminal investigation authority shall notify the lawyer's family in accordance with the provisions of the Criminal Procedure Law.</p> <p>Article 52 requires actionable misconduct to be discovered and followed up within 2 years; unless the circumstances are serious, in which case a 2/3 majority of a disciplinary committee can extend the time limit.</p> <p>Article 60 requires members of disciplinary committees to <i>recuse</i> themselves where they have a range of conflicts of interest, including '... other circumstances which could influence the <i>fairness</i> of case-handling'.</p> <p>Article 68 states that the lawyers' association professional discipline department shall notify the lawyer and the complainant of the time and place for a hearing,</p>	<p>Under s9B(1), every tribunal consists of 2 solicitors and 1 lay member.</p> <p>The Legal Practitioners' Ordinance s34 provides for a Barristers' Disciplinary Tribunal Panel appointed by the Chief Justice consisting of between 6–15 practising Senior Counsel of Hong Kong, between 6–20 other practising barristers of at least 7 years' standing and between 5–25 lay persons who are not in any way connected with the practice of the law.</p> <p>Each Barristers' Disciplinary Tribunal consists of a senior counsel, another barrister and a lay member.</p>	

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<p>with at least 5 working days' notice.</p> <p>Importantly, where the complainant or the lawyer do not make statements, offer a defence or participate in the hearing, their silence will be '... viewed as a waiver and does not influence the disciplinary committee's decision making'.</p> <p>Article 81 states that after disciplinary decisions are made, the details should be sent to the <i>China Lawyers' Credit Network</i>.</p>		
<i>Review and appeals</i>		
<p><i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014</i></p> <p>Articles 82–95 permit a lawyer to seek a review of a disciplinary committee decision.</p>	<p><i>Legal Practitioners' Ordinance</i></p> <p>s13 provides a solicitor with a general right of appeal to the Court of Appeal within 21 days of a Tribunal's decision, and the appeal will be heard in open court.</p> <p>Similar provisions exist under s37B for barristers.</p> <p>In most cases, the Law Society is expected to publish a summary of the Tribunal's findings after any appeal rights expire (s13A).</p>	<p><i>Attorney Regulation Act</i></p> <p>Article 42</p> <p>The right to appeal for review of Attorney Disciplinary Committee rulings shall lie with the disciplined lawyer, the prosecutors' office, competent authorities or the Bar Association which referred the case for discipline. Such appeals shall be made to the Bar Discipline Review Committee.</p>

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	Interestingly, there is no general requirement on the Bar Council to publish a tribunal decision in relation to barristers' conduct, and barristers can apply under s38 to vary the decision of a Barristers' Disciplinary Tribunal decision which suspends them or strikes their name off the roll.	Article 43 Bar Discipline Review Committees shall be composed of four Supreme Court Justices, 2 prosecutors from the Supreme Court Prosecutors' Office, five attorneys, and two scholars. Such Bar Discipline Review Committees shall elect one of their members to act as the Chief Commissioner.