

# THE LAW SOCIETY OF SINGAPORE

## PRACTICE DIRECTION 3.14.1

### UNCLAIMED MONEY FUND FRAMEWORK

#### **1 Terminology used in this Practice Direction**

- 1.1 Terms in the Legal Profession Act ('Act') and the Legal Profession (Unclaimed Money Fund) Rules 2019 ('Rules') have the same meaning in this Practice Direction, unless the context requires otherwise.
- 1.2 In this Practice Direction:
- (a) You – refers to a solicitor or Singapore law practice.
  - (b) Law Society – refers to The Law Society of Singapore.
  - (c) Must – refers to a specific requirement in the Act or Rules, or a mandatory provision in this Practice Direction. You must comply, unless there are specific exemptions or defences provided for in the Act or Rules, or in this Practice Direction.
  - (d) Should – it is good practice in most situations and these may not be the only means of complying with legislative requirements.
  - (e) May – a non-exhaustive list of options to choose from to meet your obligations.

#### **2 Introduction**

- 2.1 This Practice Direction takes effect on 1 November 2019.
- 2.2 Effective 1 November 2019, Part VB of the Act (comprising sections 70I to 70N) establishes the Unclaimed Money Fund ('Fund') which will be administered by the Law Society.
- 2.3 The framework in Part VB of the Act is voluntary; you are not required to transfer unclaimed client money to the Fund if you do not wish to.
- 2.4 You must familiarise yourself with Part VB of the Act, the Rules and this Practice Direction, and comply with them.
- 2.5 Transfers of unclaimed client money to the Fund must satisfy all the requirements set out in the legislation and this Practice Direction and are subject to the Law Society's approval.
- 2.6 The Law Society acts as a repository of unclaimed monies through the Fund, and administers the Fund in accordance with the Act.

### **3 Transfer of Unclaimed Client Money to the Fund**

#### **(A) Reasonable efforts**

- 3.1 As a requirement for transfer of unclaimed client money to the Fund, you must make reasonable efforts to return unclaimed money to your client (see section 70K(1) of the Act; Rule 5 of the Rules). You must take steps to locate your client which should include, but are not limited to:
- (a) sending letters, faxes or e-mails to the client;
  - (b) making phone calls to the client;
  - (c) carrying out internet searches of the client's name;
  - (d) contacting appropriate third parties (e.g. client's family members, employers, banks/creditors);
  - (e) where the client is a corporate entity, conducting an ACRA search; and/or
  - (f) for estate matters, contacting the Personal Representatives or Executors.
- 3.2 The Law Society will consider the circumstances of each case in determining whether reasonable efforts were taken, including whether the costs of undertaking such efforts are proportionate to the amount of unclaimed client money held. For small sums, reasonable efforts should be proportionate to the amount held. Where large sums are involved, the Law Society may require additional measures to be taken as may be appropriate, such as by placing an advertisement in print or other media and/or engaging professional services from private investigators. The Law Society will notify you if additional measures are required.
- 3.3 The application forms for the transfer of unclaimed client money to the Fund are available on the Law Society's website.

#### *If your client can be located*

- 3.4 Where your client can be located, but fails to cash a cheque or to give instructions and no prior agreement has been made as to the disposal of the unclaimed client money, you should write to advise the client that you will apply to transfer such money to the Fund, unless you hear to the contrary within a stated and reasonable period of time.

#### *If your client cannot be located*

- 3.5 If you have exhausted all reasonable attempts to trace your client, you will need to provide evidence of the effort made by you (Rule 4(1)(c) of the Rules), unless you are transferring legacy amounts to the Fund during the Initial Period (see Part (B) below) or small amounts to the Fund (see part (C) below). In determining whether to approve your application, the Law Society may consider if you have made reasonable efforts based on all the circumstances of the case, including the non-exhaustive factors set out under Rule 5(2) of the Rules.

**(B) Legacy amounts**

- 3.6 Legacy amounts are sums held in your client account immediately before 1 November 2019 which satisfy the dormancy requirement, i.e. no transaction (other than an excluded transaction) had occurred in the preceding 6 years (i.e. from 1 November 2013 to 31 October 2019).<sup>1</sup> Sums held on or before 1 November 2013 are considered legacy amounts if the dormancy requirement is satisfied.

*Transfer during Initial Period*

- 3.7 For transfers of legacy amounts into the Fund during the Initial Period (i.e. 1 November 2019 to 31 October 2021), you will only need to provide a written confirmation as to the dormancy requirement. Unclaimed client money may be considered dormant even if it is held in two or more different client accounts on an aggregated period of 6 years preceding 1 November 2019.

*Transfer after the Initial Period*

- 3.8 For transfers of legacy amounts into the Fund after the Initial Period (i.e. from 1 November 2021 onwards), you will need to comply with the requirements set out in Rule 4(1) of the Rules.

**(C) Small amounts**

- 3.9 Small amounts are sums not exceeding \$200 held in your client account. For transfers of small amounts into the Fund at any time, you will only need to provide a written confirmation that you have made reasonable efforts to pay the money to your client.<sup>2</sup>

**(D) All other amounts**

- 3.10 For sums which are neither legacy nor small amounts, these are considered all other amounts. Transfers of all other amounts must comply with the requirements set out in Rule 4(1) of the Rules.

**(E) Transfer of accrued interest to the Fund**

- 3.11 You may transfer both the principal amount and accrued interest (if any) pertaining to the unclaimed client money to the Fund. If you retain the accrued interest, you must ensure that the terms of engagement with your client permit you to do so. Post-transfer, Rule 8(1)(e) of the Rules requires you to keep records of the principal amount, but not the accrued interest, in your client account immediately before the transfer.

**(F) Deduction of amount for expenses incurred in making efforts to return the money**

- 3.12 You must ensure that the terms of engagement with your client allow you to deduct an amount for expenses incurred in attempting to return the money to the client. Before you apply to transfer the unclaimed client money into the Fund, you must take into account any authorised deductions made for such expenses incurred. Post-transfer, Rule 8(1)(f) of the Rules requires you to keep records of the amount deducted, if any.

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<sup>1</sup> See Rule 4(4) of the Rules.

<sup>2</sup> See Rule 4(5) of the Rules.

## **4 Applications for Payment of Transferred Unclaimed Client Money**

### **Applications made within 6 years of the transfer date**

- 4.1 If a claimant seeks your assistance to apply to the Law Society on the claimant's behalf for payment of transferred unclaimed client money from the Fund within 6 years of the transfer date, please note the following:
- (a) The Law Society will not accept an application by a solicitor or Singapore law practice as the claimant. The claimant must be the client entitled to the payment.
  - (b) The Law Society will not reimburse you if you choose to pay the claimant entitled to payment and subsequently make an application for reimbursement.
  - (c) The Law Society will only accept an application form that has been completed and signed by a sole proprietor/partner/director of a Singapore law practice.
- 4.2 The Law Society requires a solicitor or Singapore law practice advising the claimant to give the claimant all material information before the claimant takes action to recover any transferred unclaimed client money pursuant to section 70K(4) of the Act. In this regard, you must advise the claimant on the alternative procedure of applying directly to the Law Society for payment of the transferred unclaimed client money and conduct a cost-benefit analysis with the claimant. This will enable the claimant to make an informed decision.

## **5 Informing Your Client about the Unclaimed Money Fund**

- 5.1 The Law Society requires you to inform your client about the Unclaimed Money Fund for all new matters commencing from 1 November 2019, as well as matters which are ongoing as of 1 November 2019. In this regard, you must inform them about the circumstances under which: (a) unclaimed client money can be transferred to the Fund; and (b) they can apply for the payment of transferred unclaimed client money from the Fund. A sample information sheet is available on the Law Society's website.

Date: 25 OCTOBER 2019

**THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE**

## GLOSSARY

### Definitions in Part VB of the Act and the UMF Rules

<b>Definitions in Section 70I of the Act</b>	
claimant	Means any person who claims to be entitled to, or to be authorised to receive, any transferred unclaimed client money.  (Note: A claimant <b>does not</b> include a solicitor or Singapore law practice instructed by a client to make a claim for the payment of transferred unclaimed client money.)
Fund	Means the Unclaimed Money Fund maintained and administered by the Society under section 70J of the Act.
transfer date	Means—  (a) in relation to any transferred unclaimed client money, the date on which the Society approves an application for the payment of that money into the Fund under section 70K of the Act; and  (b) in relation to any transferred unclaimed intervention money, the date on which that money is paid into the Fund under paragraph 11(3) of the First Schedule to the Act.
transferred unclaimed client money	Means any money paid into the Fund under section 70K of the Act.
transferred unclaimed intervention money	Means any money paid into the Fund under paragraph 11(3) of the First Schedule to the Act.
trust account	Means a trust account within the meaning of any rules made under section 72(1) of the Act.

<b>Definitions in Rule 2 of the UMF Rules</b>	
applicant	Means a solicitor or a Singapore law practice that makes an application under section 70K(1) of the Act.
claimant, Fund, and transferred unclaimed client money	Have the meanings given by section 70I of the Act.
client	Has the meaning given by section 70K(6) of the Act, i.e. includes, in addition to any person mentioned in the definition of “client” in section 2(1) of the Act —  (a) a person for, or on behalf of, whom is held any money that was transferred, directly or indirectly to a solicitor or Singapore law practice from another solicitor or Singapore law practice; and  (b) the estate or personal representative of a deceased client.

client account	<p>Has the meaning given by rule 2(1) of the Legal Profession (Solicitors' Accounts) Rules, i.e. means</p> <p>(a) a current or deposit account maintained in the name of a solicitor at a bank; or</p> <p>(b) a deposit account maintained in the name of a solicitor with an approved finance company,</p> <p>in the title of which account the word "client" appears.</p>
excluded transaction	<p>Means a transfer (whether direct or indirect) of money that is the subject of an application under section 70K(1) of the Act to the applicant, by any other solicitor or Singapore law practice that previously held the money for or on behalf of the client entitled to the money.</p>
identifying particulars	<p>(a) in relation to an individual – means his or her:</p> <ul style="list-style-type: none"> <li>- full name (including any alias);</li> <li>- personal identification number (such as NRIC number, passport number or foreign identification number);</li> <li>- nationality;</li> <li>- residential address; and</li> <li>- telephone number</li> </ul> <p>(b) in relation to a body corporate or unincorporate – means its:</p> <ul style="list-style-type: none"> <li>- name;</li> <li>- address of its place of business or registered office;</li> <li>- telephone number;</li> <li>- date and place of its registration or incorporation; and</li> <li>- Unique Entity Number (UEN).</li> </ul>
responsible officer	<p>In relation to a Singapore law practice, means the sole proprietor, a partner or a director of that Singapore law practice, as the case may be.</p>
Society's website	<p>Means the website at <a href="https://www.lawsociety.org.sg">https://www.lawsociety.org.sg</a>.</p>