

# THE LAW SOCIETY OF SINGAPORE

## GUIDANCE NOTE 7.4.1

*[Formerly Guidance Note 1 of 2016]*

### LIMITED RETAINERS

#### **Unbundled Legal Services**

1. Limited retainers are also known as unbundled legal services.
2. Unlike a full retainer where a practitioner deals with all matters from initial instructions from the client until the case is concluded, a limited retainer is an agreement between the client and practitioner to limit the scope of services rendered by the practitioner. The practitioner provides legal services for part and not all of the client's legal matter.
3. In a limited retainer, there may be certain risks for practitioners. This includes the risk that a client may misunderstand or may be unaware of the extent of a practitioner's responsibilities. This misunderstanding or lack of awareness may result in allegations of professional negligence or complaints of professional misconduct against the practitioner for matters that are actually beyond the scope of the retainer.
4. This Guidance Note is the Law Society's view of good practice on how to manage the risks in the area of limited retainers. It is not legal advice and it is not intended to be the only standard of good practice that practitioners can follow.

#### **Professional Responsibility**

5. The standard of professional responsibility for limited retainers is the same as the standard expected of a practitioner in a full retainer.
6. A practitioner's obligations in accordance with the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), including the following obligations:
  - (a) to maintain the confidentiality of information (rule 6 of the PCR 2015);
  - (b) to avoid any conflict of interests (rules 20–22 of the PCR 2015);
  - (c) in relation to professional fees and costs (rule 17 of the PCR 2015); and
  - (d) in relation to the completion of a retainer and withdrawal from representation (rule 26 of the PCR 2015);apply as well to a limited retainer.
7. The prevention of money laundering and financing of terrorism requirements set out in Part VA of the Legal Profession Act (Cap 161, 2009 Rev Ed), Legal Profession (Prevention of Money Laundering and Financing of Terrorism) Rules 2015 (S 307/2015) and Council's Practice Direction on "Prevention of Money Laundering and Financing of Terrorism" (Practice Direction 3.2.1) apply as well to a limited retainer.
8. Limiting the scope of representation does not limit a practitioner's exposure to liability for work he/she has agreed to perform.

## Risks for Practitioners in Offering Unbundled Services

9. In *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] SGHC 213, the High Court made the following comments:

“The scope of a solicitor’s duty in any particular case depends on his retainer. The retainer is to be defined by reference to what the solicitor is instructed to do by the client and how he is expected to discharge his responsibilities in accordance with the notion of a reasonably competent solicitor. This inevitably must vary from case to case.”

10. There may be greater responsibilities to clients of limited retainers to clearly set out the precise scope of the practitioner’s responsibilities not least because the provision of unbundled services tends to increase the risks of communication issues and inadequate investigation or discovery of facts.

11. If the terms of a limited retainer are not clearly defined, a client may ask for or expect legal advice and services which fall outside the practitioner’s scope of legal services, as seen in this hypothetical scenario:

*An existing client engages Webber to act for him in the purchase of a unit in a development site. The client is keen to save on legal fees and is negotiating many elements himself. The client obtains a letter of offer for funding from a bank and forwards the letter to Webber, who places the letter in his file. The transaction proceeds smoothly but completion is delayed pending resolution of certain issues which the client is negotiating. Six months later, shortly before completion, Webber receives an angry call from the client, who informs Webber that the offer of funding expired three months ago as stated in the letter. The client is unable to obtain alternative funding and commences a claim against Webber for the lost development value of the site.*

- Seminar on Risk and Compliance: Business Benefits of Risk Management (Law Society of Singapore and Lockton Companies (Singapore) Pte Ltd) on 6 & 7 January 2016.

In the hypothetical scenario, it was not clearly explained to the client that the terms of the funding arrangements fell outside the retainer, and the client expected the practitioner to advise on the funding arrangement.

12. The potential risks in a limited retainer were highlighted in the English case of *Minkin v Landsberg* [2015] EWCA Civ 1152. The claimant, following her divorce, negotiated a settlement on her own with her former husband and she instructed a solicitor to amend a draft consent order so that it was in a form likely to be approved by the county court. The solicitor carried out those instructions. The claimant subsequently regretted the consent order and made a claim for professional negligence on the basis that the solicitor failed to advise or warn her against entering the consent order. The district judge dismissed the claimant’s claim on the basis that the retainer was limited (namely to embody the matters agreed between the husband and the wife in a consent order which the court would approve) and the solicitor was under no duty to give such advice or warnings. The claimant appealed to the Court of Appeal. The central issue in the appeal was whether the solicitor’s duties were limited. The Court of Appeal dismissed the appeal. The Court of Appeal agreed that the solicitor was working under a limited retainer and held that the solicitor was not under a duty to give the broader advice or warnings to the claimant.

13. The risks of a limited retainer are well-illustrated in litigation. For example, in motor accident litigation, it is common practice for one practitioner to file a writ on behalf of a client

for personal injury losses, and another practitioner to file another writ for property damage losses, even though both types of losses arose from the same motor accident. Each practitioner should advise the client of the risk that the discontinuance of one writ could prejudice the client's remaining writ. In *Ng Kong Choon v Tang Wee Goh* [2016] SGHC 83, the plaintiff filed three writs for three types of losses arising from the same motor accident. The first two writs were settled and discontinued without adjudication on the merits. The third writ was for cost of repairs to the plaintiff's vehicle. The High Court held that section 35 of the Subordinate Courts Act (now known as the State Courts Act (Cap 321, 2007 Rev Ed)), which contemplates one action for one cause of action, precluded the third writ. Thus, the plaintiff (or in this case, the plaintiff's insurers who instituted the third writ as a subrogation claim) had no recourse for the cost of repairs.

14. The following is a summary of some of the risks for practitioners in limited retainers:

- (a) A client may misunderstand or may be unaware of the extent of a practitioner's responsibilities.
- (b) A practitioner may fail to fully explain to the client the extent and limitations of the unbundled services.
- (c) A client may infer or believe that a full retainer was created.
- (d) A practitioner engaged under a limited retainer may not be in a position to provide complete advice to the client if the client omits to inform the practitioner of a crucial fact.
- (e) If inadequate information is given by the client, there is potential for a practitioner to make incorrect assumptions about the facts.
- (f) A practitioner may fail to qualify advice to a client by explaining that such advice is based on the facts, circumstances and assumptions evident from information provided by the client and may change with additional information.
- (g) A practitioner may be unaware that a duty of care may in some limited circumstances extend to third parties.

### **Managing the Risks**

15. The following are steps practitioners should take to manage the risks:

- (a) A practitioner should be able to identify matters that are not appropriate for a limited retainer. These may include matters where the legal issues may be too complex, or where it appears that a client may not understand the consequences of a limited retainer.
- (b) A practitioner must ensure that he/she has the relevant knowledge, skills and attributes required to undertake the matter on behalf of the client. As with a full retainer, a practitioner should strongly consider rejecting a limited retainer in areas of law in which the practitioner or the law practice have little or no experience.
- (c) A practitioner must take precautions to ensure that there can be no inference that a full retainer was created in the first place.
- (d) A practitioner must create clearly defined retainers and it should be reduced in writing to avoid any misunderstanding. The practitioner should also obtain the client's

acceptance of the limited retainer on the terms discussed and obtain a written acknowledgement from the client that he/she understands and accepts these terms.

- (e) A practitioner must clearly advise the client of the limits and alert the client to the consequences and associated risks of the limits, even if the client knows that the retainer is limited.
- (f) A practitioner must keep within the terms of the retainer and avoid giving the impression to third parties that the practitioner is providing full services.
- (g) A practitioner must inform the client that the advice given is based on the information provided by the client. If the information provided by the client is inadequate, the practitioner must make it clear to the client and depending upon the circumstances, either qualify the advice accordingly or not advise until the necessary information is provided.
- (h) A practitioner may still owe a duty to alert the client to legal problems outside the scope of the representation that are reasonably apparent and that may require legal assistance. Therefore, a practitioner should inform the client not only of the limitation of the representation, but of the possible need for other practitioners regarding issues the practitioner has not agreed to handle. In this regard, pertinent examples include highlighting to the client impending deadlines, statute of limitation issues and *res judicata* issues.
- (i) A practitioner should ensure the staff involved in the matter are aware that the retainer is limited and not full.

16. In *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR 674; [2009] SGHC 184, the Court of 3 Judges held that a solicitor should document the nature and scope of retainers with clients, maintain reliable minutes of discussions with clients and consider whether to document through correspondence, significant advice rendered. The case concerned the issue of professional conduct when acting for multiple parties. However, the practical reminder by the Court to keep records would be applicable in the context of a limited retainer.

17. Practitioners must also note rule 5(2)(k) of the PCR 2015 which provides that a practitioner must keep proper contemporaneous records of all instructions received from, and all advice rendered to, the client.

18. With regard to fees, practitioners must ensure that there is no misunderstanding about what limited services are to be performed and the fees for such services. Practitioners should use clear, simple and unambiguous language in communicating with the client concerning fees.

19. Once a matter is concluded, practitioners should confirm this in writing. If the client gives further instructions after the matter is concluded, practitioners should ensure that the client understands that this would be a new limited retainer.

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