

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.1.2

[Formerly PDR 2013, para 60; Council's Practice Direction 4 of 2007]

LIMITATION OF CIVIL LIABILITY

Although it is not acceptable for law practices and advocates and solicitors (as defined by the Legal Profession Act (Cap 161, 2009 Rev Ed)) to attempt to exclude by contract all liability to their clients, the Council has no objection, as a matter of conduct, to law practices and advocates and solicitors seeking to limit their liability provided that such limitation is not below the minimum level of cover required by the Legal Profession (Professional Indemnity Insurance) Rules (Cap 161, R 11, 2002 Rev Ed).

The cover currently required by the Legal Profession (Professional Indemnity Insurance) Rules is set out in the Schedule therein, reproduced below for easy reference:

AMOUNT OF INSURANCE COVER

1. For the purposes of rule 3(1)(a), if the advocate and solicitor is or will be practising in —		
(a) a law firm	For each and every claim in respect of civil liability incurred by that advocate and solicitor	\$1 million
(b) a law corporation	For each and every claim in respect of civil liability incurred by that advocate and solicitor — —	
	(a) if the law corporation has only one director	\$1 million
	(b) in any other case	\$2 million
(c) a limited liability law partnership	For each and every claim in respect of civil liability incurred by that advocate and solicitor	\$2 million
2. For the purposes of rule 3(2)	For each and every claim in respect of civil liability incurred by the law corporation —	
	(a) if the law corporation has only one director	\$1 million
	(b) in any other case	\$2 million
3. For the purposes of rule 3(2A)	For each and every claim in respect of civil liability incurred by the limited liability law partnership	\$2 million

This principle is subject to the position in law. The following points should be noted:

- (a) Liability for fraud or reckless disregard of professional obligations cannot be limited.
- (b) Existing legal principles and restraints cannot be overridden. In particular the courts will not enforce in the law practice's or advocate and solicitor's favour an unfair agreement with his/her client.
- (c) Under section 112(5) of the Legal Profession Act (Cap 161, 2009 Rev Ed), a provision in any agreement as to costs for contentious business that the law practice or advocate and solicitor shall not be liable for negligence, or that he/she shall be relieved from any responsibility to which he/she would otherwise be subject as a the law practice or advocate and solicitor, is null and void.
- (d) By section 2(2) of the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) (applicable by virtue of the Application of English Law Act (Cap 7A, 1994 Rev Ed)), a contract term which seeks to exclude liability is of no effect except in so far as it satisfies the requirement of reasonableness set out in section 11, namely that the contract term must be a fair and reasonable one having regard to the circumstances which were or ought reasonably to have been known to or in the contemplation of the parties when the contract was made.
- (e) Section 11(4) of the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) provides that where a contractual term seeks to restrict liability to a specified sum of money, the question of whether the requirement of reasonableness has been satisfied must take into account the resources which the person seeking to impose it could expect to be available to him/her for the purpose of meeting the liability should it arise, and how far it was open to him/her to cover himself by insurance.
- (f) When the retainer may be affected by foreign law, such matters may need to be considered according to the law applicable.

Any limitation must be brought clearly to the attention of the client and be understood and accepted by him/her. The client's acceptance of the limitation should be evidenced in or confirmed by writing.

Date: 31 January 2019

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