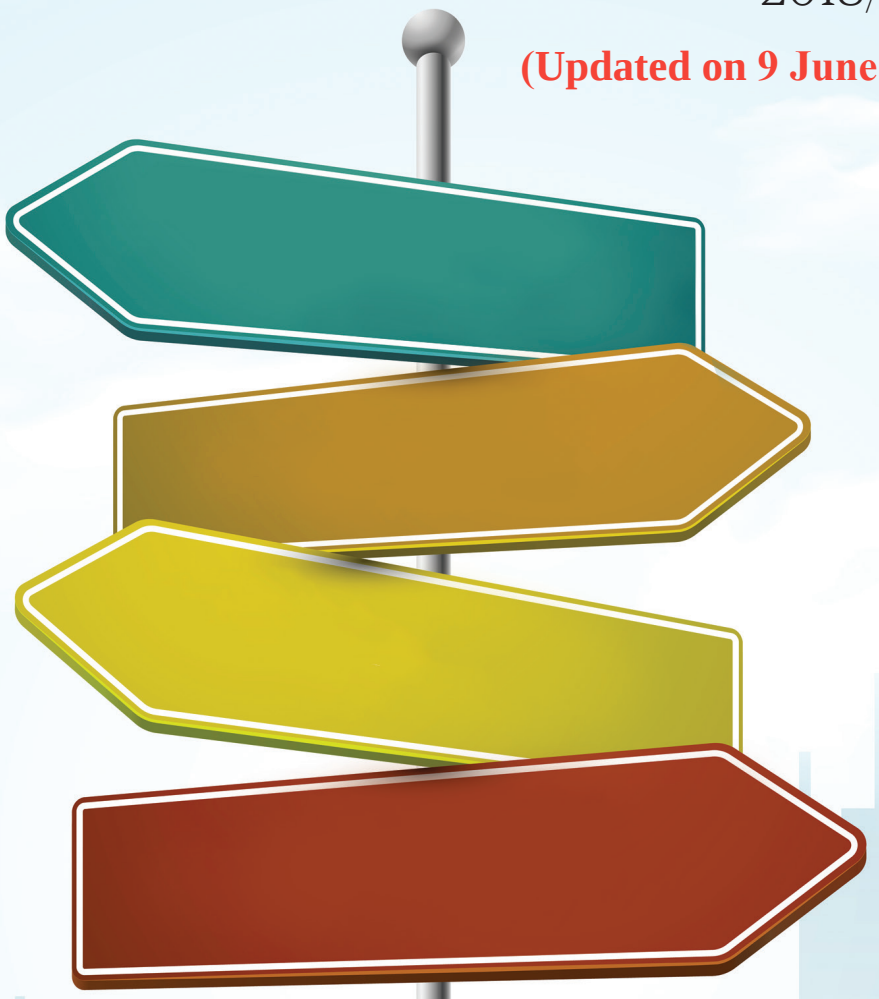
Law Society's Practice Directions & Guidance Notes

2018/2019

(Updated on 9 June 2023)



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THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 1.1.1

[Formerly GN 2013, para 5; Council's Guidance Note 1 of 2009]

CLIENTS' PRESENCE IN CHAMBER HEARINGS

1. Council has had discussions with both the Supreme Court and the State Courts about relaxing the practice of not permitting parties other than legal practitioners to appear for chambers hearings. Council representatives pointed out that many chambers hearings were not interlocutory but final either in form or substance.

2. The result of these discussions is that the courts have clarified that:

(a) The present default position is that chamber hearings are closed hearings (see Singapore Civil Procedure 2018 (Sweet & Maxwell, 2018) at paragraph 32/1/2).

(b) The presence of clients in chambers is a matter of discretion for the hearing Judge or Registrar.

(c) If a client (whether lay or professional) wishes to be present for a chambers hearing, the legal practitioner concerned should give advance notice to the other party before applying to the Judge or Registrar, for permission for the client to be present. The decision whether or not the client will be permitted will be determined by the hearing Judge or Registrar on a case-by-case basis.

3. The advance notice would be helpful to avoid the situation where only one party is allowed to be present while the other party is not due to the lack of notice. This is particularly an issue in matrimonial proceedings, where it is easily perceived by an emotional party that the other party's one-sided presence at the hearing was "unfair" to him/her.

4. Members of the Bar should consider such an application in cases where their clients may have a vital interest in the outcome of a particular hearing in chambers, for instance, in matrimonial proceedings where ancillary matters are usually the real substance of the dispute.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 1.3.1

[Formerly PDR 2013, para 13; PDR 1989, chap 1, para 13(b)]

REQUEST FOR VACATING OR ADJOURNMENT OF CRIMINAL CASES IN THE STATE COURTS

Paragraphs 28 and 68 of the State Courts Practice Directions provides guidelines to what legal practitioners need to do when requesting to either vacate or adjourn a case. The State Courts have informed that in addition for criminal matters, all such request should be addressed to the Registrar, State Courts. The State Courts would also appreciate if legal practitioners could indicate the case reference and court number for easy reference as it will assist the State Courts in directing the request to the appropriate court.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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PRACTICE DIRECTION 1.4.1

[Formerly PDR 2013, para 41; PDR 1989, chap 1, para 34]

EXTENSION OF TIME

If an extension of time within which to plead be given to a party he/she shall, if so required, accept short notice of trial at the next sittings of the court as if the pleading had been delivered in the time ordinarily limited for its delivery without any extension, as the party allowing the extension would have been in a position to have given notice of trial for such sittings.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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PRACTICE DIRECTION 1.4.2

[Formerly PDR 2013, para 39; PDR 1989, chap 1, para 31]

PUNCTUALITY FOR COURT HEARINGS

The Council would like to stress that all members should be punctual for all court hearings. The Council also suggests that members make the appropriate estimation for lengths of adjournments in order to assist in the general administration of the court's time.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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PRACTICE DIRECTION 1.6.1

[Formerly PDR 2013, para 50; PDR 1989, chap 1, paras 52–53]

ATTESTATION OF DOCUMENTS

A. Requirement for Signatories to Personally Appear Before Legal Practitioner Attesting to the Signature of Documents

In a past complaint investigated by the Inquiry Committee, it was alleged that a legal practitioner had attested the signature of certain documents without the signatory having personally appeared before the legal practitioner. Members of the profession are warned of the dangers of this practice. Members who are Commissioners for Oaths are particularly advised to heed the warning.

B. False Attestation of Documents

False attestation of documents may amount to grossly improper conduct in the discharge of a legal practitioner's professional duty and a breach of the Legal Profession Act (Cap 161, 2009 Rev Ed). Legal practitioners should be mindful of the serious and obvious dangers of this practice.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 1.6.2

[Formerly PDR 2013, para 43; PDR 1989, chap 1, para 36]

DUTY OF LEGAL PRACTITIONER TO LAY INFORMATION OF CRIMINAL OFFENCE

Facts: A legal practitioner acting for a woman who wishes to petition for the divorce of her husband discovers that the husband was guilty of having committed the offence of bigamy. The legal practitioner sought guidance whether he/she was bound to lay criminal information against the husband before proceeding with the divorce suit.

Guidance: The legal practitioner was under no obligation to lay information of bigamy having been committed by the husband before proceeding with the divorce petition. However, in the divorce petition, the legal practitioner was bound to disclose all the facts within his/her knowledge.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 1.6.1

[Formerly GN 2013, para 12]

GUIDELINES ON REPORTING SUBVERSION OF THE ADMINISTRATION OF JUSTICE

1. This Guidance Note sets out the relevant guidelines for a legal practitioner to report instances of subversion of the administration of justice to the Council.

2. Legal practitioners have obligations as officers of the court to assist in the administration of justice. Legal practitioners should therefore report conduct which is subversive of the administration of justice. Council has set out below general guidelines for any such report. That is the basis and purpose of this Guidance Note.

3. For the purposes of this Guidance Note, 'Scheduled Conduct' means any forgery, fabrication or alteration of court documents of the courts of Singapore or elsewhere. This Guidance Note is intended to cover Scheduled Conduct by a legal practitioner. A legal practitioner may raise with the Council or the Advisory Committee of the Professional Conduct Council as to whether any conduct constitutes Scheduled Conduct for the purposes of this Guidance Note.

4. A legal practitioner ('Reporting Practitioner'), who knows or has reason to believe that another legal practitioner ('Subject Person') has committed any conduct which constitutes Scheduled Conduct is recommended to, as soon as practicable, submit to the Council a report ('Report') with supporting documents (if available) which contains particulars including details of the Reporting Practitioner, the Subject Person, and the alleged conduct.

5. In making a Report, the Reporting Practitioner shall provide such assistance as the Council may find necessary or desirable in considering and acting on the Report.

6. The Reporting Practitioner should, prior to making a Report, write to the Subject Person on a confidential basis to communicate his intention to make a Report and to invite the Subject Person to provide a written response within eight days of receipt in relation to the allegations of the conduct to be raised in such Report, save for circumstances:

(a) where a delay in submitting the Report to Council is likely to adversely affect the due and proper administration and dispensation of justice; or
(b) where notifying the Subject Person is likely to adversely affect the due and proper administration and dispensation of justice.

7. A Report shall be made *bona fide* and not with the objective of securing any undue advantage to the Reporting Practitioner, his law practice and/or his client(s). The Council may take appropriate action against a Reporting Practitioner who is found by the Council to have submitted a Report without *bona fides* and/or with the objective of securing any undue advantage to the Reporting Practitioner, his law practice and/or his client(s).

8. Where the Report contains information which is privileged, the Reporting Practitioner should seek and encourage his client's consent to the disclosure.

9. Upon receiving the Report, the Council may:

(a) take cognizance of the Report under section 59(1)(*c*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') and take such action as it deems fit in relation thereto;

(b) exercise its discretion under section 85(2) of the LPA to refer the material information to the Chairman of the Inquiry Panel;
(c) request that the Reporting Practitioner makes a complaint under the LPA or a report to a relevant authority against any person (whether it is the Subject Person or otherwise); or
(d) take such action as it deems fit in relation thereto.

10. For the avoidance of doubt, nothing of the above is intended to or shall have the effect of affecting, modifying or supplanting any obligation to report any person and/or conduct to any authority or other party under any written law or regulation.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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PRACTICE DIRECTION 1.7.1

[Formerly PDR 2013, para 38; PDR 1989, chap 1, para 30]

LEGAL PRACTITIONERS AS WITNESSES

A legal practitioner shall not represent any party in any case in which he/she has reason to believe that he/she will be a witness in respect of a material and disputed question of fact, and if while appearing in a case it becomes apparent that he/she will be such a witness, he/she should discharge himself/herself and in so doing, take all reasonable steps to ensure that he/she does not jeopardise his/her client's interests.

A legal practitioner shall not appear before an appellate tribunal if in the case under appeal he/she has been a witness on a material and disputed question of fact in the court below.

Nothing contained in this Practice Direction shall prevent a legal practitioner from swearing an affidavit as to formal or undisputed facts in matters in which he/she acts or appears.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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PRACTICE DIRECTION 1.8.1

[Formerly PDR 2013, para 54; PDR 1989, chap 1, para 59]

LETTERS OF DEMAND

A. Issue of Letter of Demand

A legal practitioner shall not issue a demand for anything that is not properly recoverable by due process of the law.

B. Simple Debt

Where a legal practitioner is instructed to collect a simple debt, it is improper for the legal practitioner also to demand the costs of the letter which he/she sends to the debtor because at that stage it cannot be said that the costs of the letter are properly recoverable in law.

C. Settlement for Motor Accidents

The illustration in (B) above, however, does not apply to the case where, for example, following a motor accident, there is correspondence between the legal practitioner for the insured or a third party and the insurers or their legal practitioners, resulting in an agreement by the insurers or the third party in arriving at the settlement.

D. Payment of Arrears under Mortgage Debt

Where a legal practitioner acting for a mortgagee is instructed to demand payment of arrears due under the mortgage, he/she must not, at the same time, demand payment by the mortgagor of the costs of that letter unless he/she explains that such costs can be added to the amount of the mortgage debt, for example, where the mortgage instrument or contract so provides.

E. Settlement for Libel

Where a creditor wrongly made a demand for the payment of a debt alleged to be due to him/her from a third party, who then consulted a legal practitioner, there is no professional objection to the legal practitioner for the third party writing to say that he/she would be prepared to advise his/her client to accept an apology for the libel provided his/her charges were paid.

F. Agreement for Payment by Instalments and Costs

There is no professional objection to a legal practitioner making arrangements on behalf of a creditor client for the payment of a simple contract debt or a judgment debt by instalments subject to the stipulation that the debtor shall pay the creditor's legal practitioner costs.

It is also not improper for a legal practitioner acting for a creditor to agree to accept payment by instalments in liquidation of a debt only if the debtor's legal practitioners guaranteed the payment.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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PRACTICE DIRECTION 1.9.1

[Formerly PDR 2013, para 105; Council's Practice Direction 2 of 2004]

APPOINTMENT OF A SOLICITOR OR A PERSON EMPLOYED BY A SOLICITOR TO ACT AS BAILIFF UNDER SECTION 15A OF THE STATE COURTS ACT

Where authorised by the Registrar to carry out the function as bailiff pursuant to section 15A of the State Courts Act (Cap 321, 2007 Rev Ed) ('SCA'), members' attention is drawn to Practice Direction 99 of the State Courts Practice Directions and the information provided below.

A. Professional Indemnity

Members are advised that the Law Society's Compulsory Professional Insurance Indemnity Scheme does not cover a member or any person employed by a law practice in their exercise of the powers and performance of their duties as a bailiff. Members are urged to obtain their own professional insurance cover for their practices.

B. Conflict of Interests

Members should be mindful of their ethical duty not to act as a bailiff under the SCA when there is a conflict of interest. Members' attention is drawn to the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), in particular rules 5 and 22 therein. To preserve independence of the legal practitioner, Council has decided that a member cannot act as a bailiff under section 15A of the SCA to execute the judgment of a client of his/her practice. Accordingly, any member or staff of the law practice acting for a judgment creditor cannot be appointed as a bailiff under section 15A of the SCA to execute the judgment obtained by that judgment creditor.

C. Confidentiality

Members authorised to act as a bailiff under section 15A of the SCA to execute the judgment of a judgment creditor, should be mindful of their duty to maintain in confidence any information relating to that judgment and the execution thereof. Members' attention is drawn to rule 6 of the PCR 2015.

D. Costs

Notwithstanding the application of section 15A of the SCA and the Rules of Court (Cap 322, R 5, 2014 Rev Ed), members are reminded that contingency fees are expressly prohibited by section 107 of the Legal Profession Act (Cap 161, 2009 Rev Ed) and rule 18 of the PCR 2015. Members should not render any bill, in relation to any work done as a bailiff, which amounts to gross overcharging that will affect the integrity of the profession.

E. Proceeds of Sale

Members are reminded that the proceeds of sale are not to be paid into their clients' accounts as these are not clients' moneys or the practice's office account. All proceeds of sale are to be paid to the State Court's bailiff's account.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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PRACTICE DIRECTION 1.9.2

[Formerly PDR 2013, para 42; PDR 1989, chap 1, para 35]

COMMISSIONER FOR OATHS: ATTESTATION BY A MEMBER OF THE SAME LAW FIRM

It has come to the attention of the Council that there have been cases in which an advocate and solicitor (as defined by the Subsidiary Legislation) acts as Commissioner for Oaths in a matter in which another member of the firm is acting as advocate and solicitor.

The Council is of the view that in order to avoid any suggestion that there may be a conflict of interest, the advocate and solicitor should not act as Commissioner for Oaths in any matter in which he/she or any other member of the firm is acting as advocate and solicitor, and vice versa. This is in accordance with the current rule 9 of the Commissioner for Oaths Rules (Cap 322, R 3, 1997 Rev Ed).

For the avoidance of doubt, this restriction does not extend to members of different law practices within the same group practice.

[*Note: Members are reminded to refer to the Singapore Academy of Law's website for the latest Commissioner for Oaths manual(s).*]

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 2.1.1

[Formerly PDR 2013, para 55; RUL/2/1991, 1991 Circular No 7, July 1991]

CHALLENGING ANOTHER LEGAL PRACTITIONER ON LAW SOCIETY'S RULINGS

It is not proper conduct for a legal practitioner to challenge another legal practitioner who acts in accordance with a ruling made by the Law Society simply because the challenging legal practitioner does not agree with that ruling. The appropriate course would be for the challenging legal practitioner to take up the disputed ruling with the Law Society, if he/she can.

A legal practitioner who seeks a ruling from the Law Society can always write to the Law Society in the proper manner for a ruling without the consent of the other legal practitioner involved.

The refusal of the other legal practitioner to agree to refer a matter to the Law Society for a ruling is in itself not improper conduct. However, the legal practitioner who refuses to agree to request the ruling is only preventing himself/herself from putting forward his/her contentions to the Law Society and has to take the consequences of his/her actions.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 2.1.2

[Formerly PDR 2013, para 88]

COMPLAINTS UNDER SECTION 85 OF THE LEGAL PROFESSION ACT

A. Procedure for Complaints

[Formerly PDR 1989, chap 7, para 15(a)]

Legal practitioners who make complaints or who act for complainants are requested to furnish to the Secretariat of the Law Society of Singapore, one copy of their letter of complaint with the relevant enclosures.

B. Complaints to be made on Substantial Grounds

[Formerly PDR 1989, chap 7, para 15(b)]

In a previous complaint investigated by the Inquiry Committee, it was noted that the complaint, under investigation, was not substantiated. The Council had ruled that when a firm of legal practitioners makes a serious complaint against another firm of legal practitioners, it should be made on substantial grounds and not indulge in veiled allegations.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 2.1.3

[Formerly PDR 2013, para 62]

ENQUIRIES TO RELEVANT COMMITTEE

A. Enquiries to the Law Society or Relevant Committee

[Formerly PDR 1989, chap 7, para 36]

It has come to the attention of the Council that members have sought guidance from the Law Society or its Committees without disclosing that there are other relevant parties concerned with the question thereby obtaining an answer which did not take into account the opposing views on the question.

The Council would like to remind members who wish to enquire or require guidance from the Law Society or its Committees to extend a copy of the letter to any other party who may be involved in the issue or problem raised to enable the Law Society to consider any opposing views on the matter.

B. Hypothetical Reference

[Formerly PDR 1989, chap 7, para 35]

Inquirers should be informed that the Council will not entertain any reference or request for a ruling in hypothetical cases or where the identities of the parties involved are not revealed.

An inquirer may, if there is a need to do so, request Council not to disclose the identities of the parties to the Professional Conduct Council Advisory Committee ('Advisory Committee'). In such an event, the Council reserves the right to disclose such names as it deems necessary to enable the Committee to properly determine the reference.

C. Guidelines for Inquiries to Advisory Committee

[Supersedes Council's Practice Direction 2 of 2009]

Part C of this Practice Direction supersedes Council's Practice Direction 2 of 2009.

Part of the Advisory Committee's function is to provide guidance to both Singapore-qualified lawyers and foreign-qualified lawyers on ethical issues.

Requests for advice or guidance from the Advisory Committee should comply with the following guidelines. The Advisory Committee reserves the right not to consider or to give any guidance on requests which do not follow the guidelines set out below:

(a) The request for guidance should be submitted in writing to the Law Society as the Secretariat to the Advisory Committee. Requests should not be submitted to the chairperson of the Advisory Committee or to members of the Committee individually. Members who wish to submit a request to the Advisory Committee for guidance may write in to ethics_enquiry@lawsoc.org.sg.

(b) Queries to the Advisory Committee must be sent to the Secretariat at the email address above by the lead counsel or solicitor-in-charge of the matter. This would typically refer to the relevant partner or director of the law practice.

(c) If there are any urgent or scheduled hearings taking place with regard to the subject matter of the query, the Secretariat must be informed immediately. This may affect the timelines in the Advisory Committee's consideration of the query. If applicable, the inquirer must also inform the Secretariat whether the subject matter of the query has been placed before the court.

(d) Inquirers should seek guidance only in respect of ethical matters which are not clearly dealt with by legislation (including subsidiary legislation), practice directions in force, common law or ethical matters in respect of which there is some genuine ambiguity or no other available guidance.

(e) The request for guidance should not be hypothetical – it must deal with a real ethical issue which has arisen or which it is reasonably expected to arise in the inquirer's own professional practice.

(f) The request for guidance cannot be made anonymously, and the inquirer must identify all parties involved (including the inquirer).

(g) Where a joint request for guidance by at least two law practices is made, or where there are at least two or more law practices involved in the request, the Secretariat may invite any and/or all parties to make submissions or comments before the Advisory Committee issues any guidance. In this regard:

    (i) Where a deadline has been fixed for submissions by either party to the Secretariat, no further submissions are to be made after the deadline without the permission of the Secretariat. The Secretariat reserves the right to disregard any further correspondence from any party addressed to or copied to the Secretariat after such deadline.
    (ii) If either party requires an extension of time to make submissions to the Advisory Committee, the relevant party must obtain the permission of the Secretariat to do so at least one working day before the expiry of the deadline.

(h) The request for guidance should be a genuine inquiry and not a disguised complaint against another legal practitioner. In particular, requests for guidance should not be used to malign, harass or pressurise opposing parties or counsel or to gain tactical advantage.

(i) Requests for guidance should not be made in respect of matters which should properly be dealt with either by the court or between the parties.

(j) The request for guidance should set out for the Advisory Committee's consideration:
    (i) the identities of all parties involved and the nature of each party's involvement in the matter (including the inquirer);
    (ii) a full and accurate account of all material facts, bearing in mind the need to observe any obligation of confidentiality which may be owed to the client(s) concerned;
    (iii) a summary of the ethical issues involved;
    (iv) all relevant authority bearing on the point such as legislation (including subsidiary legislation), practice directions, text books, articles and cases, whether from Singapore or elsewhere; and
    (v) the specific question(s) upon which the inquirer is asking the Committee to express its views.

(k) If the matter touches upon the conduct of another legal practitioner or if the guidance sought has the potential to affect another legal practitioner, the inquirer should inform the other legal practitioner of the intention to seek guidance from the Advisory Committee and the letter to the Law Society seeking guidance should be copied to the other legal practitioner.

If the subject matter of the inquiry has been the subject of correspondence between the inquirer and the other legal practitioner, the inquirer should also provide the same to the Law Society.

(l) The Committee reserves the right to seek further information or clarification from the inquirer before issuing any guidance. Further, to the extent that third parties (including other legal practitioners) may be involved in the subject matter of the request for guidance, the Committee reserves the right with the inquirer's consent to seek clarification or information from those third parties. If any additional information or clarification is not forthcoming or if the inquirer does not consent to the Committee seeking the further information or clarification from relevant third parties, the Advisory Committee reserves the right not to provide guidance on the inquiry.

(m) Any guidance given is confidential and is intended only for the benefit of the inquirer. The Advisory Committee may publish anonymised versions of the inquiry and the guidance where the subject matter of the request is one of general application or interest.

(n) The Advisory Committee provides guidance, not rulings. Neither the inquirer nor any third party who may be affected by the subject matter of the inquiry is bound by the guidance given by the Advisory Committee. Only the courts can provide rulings on the scope and extent of legal practitioners' professional obligations and bind legal practitioners or third parties with those rulings. Having said that, the courts do give some weight to Advisory Committee's guidance representing, as it does, the professional body's view. The weight which will be given will depend to a large extent on the completeness and accuracy with which all relevant material has been placed before the Committee together with the request for guidance.

(o) While the Law Society and the Advisory Committee's starting point is that all inquiries are confidential, if the inquiry is in respect of completed conduct (as opposed to future conduct) and discloses potential professional misconduct or criminal wrongdoing, the Advisory Committee may be under a duty to report that misconduct through the relevant channels.

The Advisory Committee's advice or guidance is well-researched and generally entails substantial consideration and discussion by Committee members. The Committee aims to respond with a formal advice or guidance within three to six weeks from the date that the Committee accepts a request for guidance. Where an expedited response is necessary, the inquirer should make that clear in the inquiry the reasons for the urgency.

The Advisory Committee also welcomes input from legal practitioners about practical issues or suggestions for reform of the rules of ethics.

D. Requests to the Conveyancing Practice Committee for Guidance, Direction(s) or Ruling(s)
[Formerly PD/3/2013]

1. Functions of the Committee

Amongst other functions, the Conveyancing Practice Committee has been tasked with assisting members in settling disputes in respect of conveyancing transactions so that they need not be settled in court. In addition where customary conveyancing practice is unclear, the Committee may be asked to provide guidance. However where issues are clearly legal disputes of a magnitude that ought to be brought to the court for a determination, the Committee will not interfere. Further elaboration of the Committee's tasks and assistance are given below.

2. Requesting guidance

Members must first make a distinction between seeking guidance from seeking a ruling or direction. Seeking guidance by a member may be made unilaterally. No 'other party' to the transaction should be named. Guidance given by the Committee is informative in nature and is not binding on any member. Guidance may not be used to indicate to 'another party' how 'that party' should act or conduct itself. The Committee discourages members from seeking guidance on practices that are well established or ought to be known or practised in the ordinary course of a normal conveyancing transaction.

3. Requesting direction(s) or ruling(s)

Direction(s) and ruling(s) are given when two or more members agree to place before the Committee the identified area of dispute in the relevant conveyancing transaction and for the Committee to either provide a direction or give a ruling. Requests by members should comply with the following protocols, otherwise the Committee may not consider the request:

(a) the facts of case must be agreed upon by all requesting members; the issues must be identified and clearly presented. Both members must state their respective positions;

(b) the presented issues should only be in respect of conveyancing practice matters that do not require interpretation of any relevant legislation (including subsidiary legislation). Where aspects of common law are referred to, that common law must hinge on well-known decided principles that are already enunciated by the court. If the principle of law is being question or queried, the Committee may decline the request and recommend the members to settle their dispute in court;

(c) the facts of the case must not be hypothetical – as stated in (a) above, these facts must relate to the actual circumstances that have taken place and from which the issues arose;

(d) to summarise, requests by members for a direction or ruling should set out for the Committee's consideration:
  (i) a full and accurate account of all material facts, bearing in mind the need to observe any obligation of confidentiality;
  (ii) a summary of the conveyancing issues involved and the submission of the respective members;
  (iii) all relevant case authorities or referred to legislation bearing on the presented issues should accompany the respective member's submission; and

(e) the requesting members must also adopt the following terms in the protocol:
  (i) all submissions and copies of documents, case authorities, legislation, *etc*, must be copied to the other member;

(ii) requesting members must agree to abide and be bound by the direction or ruling of the Committee without qualification; and
(iii) when asked to provide further documents by the Committee or to answer questions raised, the members should respond within five business days.

4. Effect of a decision by the Committee

Although the Committee does not monitor the actions or conduct of members after the direction or ruling is given, the Committee expects that members take the necessary action(s) to abide by and comply with the direction or ruling given.

Any guidance, direction or ruling given is confidential and is intended only for the benefit of or to bind (as the case may be) the requesting members. The Committee may publish anonymised versions of the case referred to by members and the decision of the Committee where the subject matter of the request is one of general application or interest to members who practise conveyancing.

Whilst the Law Society and the Committee recognise that the recitation of facts and circumstances by requesting members are confidential, the Committee may be under a duty to report any professional misconduct or criminal wrongdoings which constitutes a breach of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) or the Criminal Procedure Code (Cap 68, 2012 Rev Ed) respectively.

5. Timelines and conclusion

The Committee generally will provide its decision to any request within three to six weeks from date of the request. This is after all the necessary documents are received by the Committee. Members should not expect instantaneous responses as the Committee members are also working lawyers. No query will be entertained over the telephone. Members must not expect the staff of the Law Society or the Director-in-charge of the particular portfolio to answer such queries. Expedited response will only be given as an exceptional case where the matter at hand is of utmost urgency.

Date: 4 January 2022

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 2.1.4

[Formerly PDR 2013, para 94; PDR 1989, chap 7, para 24]

REPRESENTATIONS MADE BY THE LAW SOCIETY

Members of the Bar are reminded that representations for closed consultations made by the Law Society are private and confidential and they are not to be used for any purposes (apart from inspection) without first obtaining the necessary permission from the Council.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.1.1

[Formerly GN 2014, para 2]

AD HOC ADMISSIONS UNDER SECTION 15 OF THE LEGAL PROFESSION ACT

1. This Guidance Note will discuss:

(a) Generally, the factors to be considered for the *ad hoc* admission of Queen's Counsel (or any person holding an appointment of equivalent distinction) under section 15 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA'); and

(b) Specifically, the recommended practice in order to properly evidence the "necessity for the services of a foreign senior counsel" and the lack of "availability of any Senior Counsel or other advocate and solicitor with appropriate experience" under paragraphs 3(*b*) and 3(*c*) of the Legal Profession (Ad Hoc Admissions) Notification 2012 (S 132/2012) ('Notification').

A. Factors to be Considered for Ad Hoc Admission under Section 15 of the Legal Profession Act

1. Legislation

2. Section 15 of the LPA states:

> *"(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case, admit to practise as an advocate and solicitor any person who –*
>
> *(a) holds –*
>
> *(i) Her Majesty's Patent as Queen's Counsel; or*
>
> *(ii) any appointment of equivalent distinction of any jurisdiction;*
>
> *(b) does not ordinarily reside in Singapore or Malaysia, but has come or intends to come to Singapore for the purpose of appearing in the case; and*
>
> *(c) has special qualifications or experience for the purpose of the case.*
>
> *(2) The court shall not admit a person under this section in any case involving any area of legal practice prescribed under section 10 for the purposes of this subsection, unless the court is satisfied that there is a special reason to do so.*
>
> *(3) Any person who applies to be admitted under this section shall do so by originating summons supported by an affidavit of the applicant, or of the advocate and solicitor instructing him, stating the names of the parties and brief particulars of the case in which the applicant intends to appear.*
>
> **...**

(6A) The Chief Justice may, after consulting the Judges of the Supreme Court, by notification published in the Gazette, specify the matters that the court may consider when deciding whether to admit a person under this section."

3. Rule 32(1) Legal Profession (Admission) Rules 2011 (S 244/2011) ('LPAR') states:

"(1) The following areas of legal practice are prescribed for the purposes of section 15(2) of the Act:

(a) constitutional and administrative law;

(b) criminal law;

(c) family law."

4. Paragraph 3 of the Notification states:

"For the purposes of section 15(6A) of the Act, the court may consider the following matters, in addition to the matters specified in section 15(1) and (2) of the Act, when deciding whether to admit a person under section 15 of the Act for the purpose of any one case:

(a) the nature of the factual and legal issues involved in the case;

(b) the necessity for the services of a foreign senior counsel;

(c) the availability of any Senior Counsel or other advocate and solicitor with appropriate experience; and

(d) whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel for the purpose of the case.

[collectively, the 'Notification Matters']*"*

2. Summary of factors

5. For all cases, the factors to be considered are:

(a) Subject to the formal requirements in sections 15(1)(*a*) and 15(1)(*b*) of the LPA, whether the foreign senior counsel has special qualifications or experience for the purpose of the case (section 15(1)(*c*) of the LPA).

(b) Nature of factual and legal issues involved in the case (paragraph 3(*a*) of the Notification).

(c) The necessity for the services of a foreign senior counsel (paragraph 3(*b*) of the Notification).

(d) The availability of any Senior Counsel or other advocate and solicitor with appropriate experience (paragraph 3(*c*) of the Notification).

(e) Whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel for the purpose of the case (paragraph 3(*d*) of the Notification).

3. Additional factor – Constitutional and administrative law / criminal law / family law cases

6. For cases involving constitutional and administrative law, criminal law or family law, apart from the factors set out in paragraph 5 above, there is an additional factor to be considered. The court has to be satisfied that there is a special reason for the admission (section 15(2) of the LPA).

4. Case-law

7. There is evolving case-law construing the provisions highlighted above.

8. In *Re Beloff Michael Jacob QC* [2014] SGCA 25, the Court of Appeal commented that the architecture of the regime requires the court first to apply its mind to the following mandatory requirements:

(a) the formal requirements in sections 15(1)(*a*) and 15(1)(*b*) of the LPA;

(b) the requirement under section 15(1)(*c*) of the LPA that the foreign counsel has special qualifications and experience for the purpose of the case (as specified by the four Notification Matters in the Notice set out at paragraph 4 above); and

(c) the threshold inquiry, under section 15(2) of the LPA, of whether a special reason must be shown (*ie*, where a case involves constitutional and administrative law, criminal law or family law, as prescribed under rule 32(1) of the LPAR) and if so, whether it has been shown.

9. If these matters are all met, the court must then consider the further matters specified in the Notification, and then exercise its discretion having regard to all the circumstances.

B. Mode of Application for Ad Hoc Admission under Section 15 of the Legal Profession Act

10. An application to be admitted under section 15 of the LPA shall be made by originating summons supported by an affidavit of the applicant or of the advocate and solicitor instructing him (section 15(3) of the LPA).

11. However, an advocate and solicitor should not affirm an affidavit in support of an application under section 15 of the LPA unless the facts and matters deposed to in the affidavit are within the personal knowledge of the advocate and solicitor. Where the facts and circumstances are within the personal knowledge of the party in the underlying suit or case ('Party Concerned'), the affidavit in support of an application under section 15 of the LPA should be affirmed by the Party Concerned.

12. The applicant (*ie*, the foreign senior counsel seeking *ad hoc* admission) should depose to an affidavit setting out his/her qualifications and that he/she thinks that he/she is well-suited to argue the underlying suit or case.

C. Necessity for the Service of a Foreign Senior Counsel and Availability of Senior Counsel or Other Advocate and Solicitor with Appropriate Experience – Guidance

13. In considering the factors under paragraphs 3(*b*) and 3(*c*) of the Notification (*ie*, that there was a necessity for the services of a foreign senior counsel and a lack of available Senior Counsel or other advocate and solicitor with appropriate experience to act in the case

('Appropriate Local Counsel')), the following are taken into account *(Re Caplan Jonathan Michael QC* [2013] SGHC 75 at 23):

(a) The nature of the contact between the party and the local counsel who was approached.

(b) The mode of contact.

(c) The date(s) and duration(s) of the call(s) and/or meeting(s).

(d) The venue(s) of the meeting(s) as well as a summary of the discussion(s) held.

(e) The date of the local counsel's refusal to take on the party's case and the reasons for the refusal.

14. In considering the factors under paragraphs 3(*b*) and 3(*c*) of the Notification, the Party Concerned or his/her advocate and solicitor (where the facts are within his/her personal knowledge) ('Instructing Solicitor') should state in his/her affidavit accompanying the section 15 LPA application that there was a necessity for the services of a foreign senior counsel and there was a lack of Appropriate Local Counsel who could act for the Party Concerned. To support his/her claim, he/she should, in his/her affidavit, list the law practice(s) and/or Appropriate Local Counsel he/she had unsuccessfully approached to act for the Party Concerned.

15. In order to properly evidence this, the Party Concerned or the Instructing Solicitor (where the facts are within his/her personal knowledge) should write a confirmatory letter to the Appropriate Local Counsel and/or his/her/their law practice(s) who were unsuccessfully approached, and state the following:

(a) that the Appropriate Local Counsel and/or his/her/their law practice(s) had been approached by the Party Concerned and/or the Instructing Solicitor, but was unable to act for the Party Concerned;

(b) the date(s) of any meeting or communication between the Party Concerned and/or the Instructing Solicitor and the Appropriate Local Counsel and/or his/her/their law practice(s); and

(c) any other relevant information (for example, the reasons for the Appropriate Local Counsel and/or his/her/their law practice(s) being unable to act for the Party Concerned and the date of their refusal to act for the Party Concerned).

16. Copies of the letter(s) in this regard, including any replies, should be exhibited in the affidavit in support of the section 15 LPA application.

17. This will go towards ensuring the veracity of the information provided by the Party Concerned on the necessity for the services of a foreign senior counsel and the lack of availability of Appropriate Local Counsel. However, any applicant for such *ad hoc* admission should understand that he/she is ultimately responsible for the contents of the affidavit(s) filed in support, and should be guided by the legal requirements for such affidavit(s), bearing in mind the statutory and case-law framework in place.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY
OF SINGAPORE

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

PRACTICE DIRECTION 3.2.1

[Formerly Practice Direction (Para 1 of 2015)]

Date: 11 September 2020

Contents

DEFINITIONS AND GLOSSARY OF TERMS USED IN THIS PRACTICE DIRECTION

Definitions

Definition in the Legal Profession Act (Cap 161, 2009 Rev Ed)	
Relevant matter	Means any of the following matters - (*a*) acquisition, divestment or any other dealing of any interest in real estate; (*b*) management of client's moneys, securities or other assets, or of bank, savings or securities accounts; (*c*) creation, operation or management of any company, corporation, partnership, society, trust or other legal entity or legal arrangement; (*d*) acquisition, merger, sale or disposal of any company, corporation, partnership, sole proprietorship, business trust or other business entity; (*e*) any matter, in which a legal practitioner or law practice acts for a client, that is unusual in the ordinary course of business, having regard to — (i) the complexity of the matter; (ii) the quantum involved; (iii) any apparent economic or lawful purpose of the matter; and (iv) the business and risk profile of the client.
Definitions in the Legal Profession (Prevention of Money Laundering And Financing of Terrorism) Rules (S 307/2015)	
Beneficial owner	In relation to an entity or a legal arrangement — (*a*) means — (i) an individual who ultimately owns or controls the entity or legal arrangement; or (ii) an individual on whose behalf the entity or legal arrangement conducts a transaction concerning a relevant matter (being a transaction for which a legal practitioner or law practice is engaged); and (*b*) includes an individual who exercises ultimate effective control over the entity or legal arrangement.
Client	Includes — (*a*) in relation to contentious business, any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ, a legal practitioner or law practice; and (*b*) in relation to non-contentious business, any person who, as a principal or on behalf of another person, or as a trustee, an executor or an administrator, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs or is about to retain or employ, a legal practitioner or law practice.
Close associate	In relation to a politically-exposed individual, means an individual who is known to be closely connected to the politically-exposed individual, either socially or professionally, such as, but not limited to — (*a*) a partner of the politically-exposed individual; (*b*) an employee or employer of the politically-exposed individual;

	(*c*) a person accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the politically-exposed individual; or (*d*) a person whose directions, instructions or wishes the politically-exposed individual is accustomed or under an obligation, whether formal or informal, to act in accordance with.
Commercial Affairs Officer	Means a Commercial Affairs Officer appointed under section 64 of the Police Force Act (Cap 235).
Countermeasure	Means a measure to prevent, or to facilitate the prevention, of money laundering or the financing of terrorism in a country or jurisdiction other than Singapore.
Domestic politically-exposed individual	Means an individual who is or has been entrusted with a prominent public function in Singapore.
Entity	Means a sole proprietorship, a partnership, a limited partnership, a limited liability partnership, a corporation sole, a company or any other association or body of persons corporate or unincorporate.
Family member	In relation to a politically-exposed individual, means a spouse, child (including an adopted child or a stepchild), sibling or parent of the politically-exposed individual.
Foreign politically-exposed individual	Means an individual who is or has been entrusted with a prominent public function in a country or jurisdiction other than Singapore.
Legal arrangement	Means any express trust or other similar legal arrangement.
Politically-exposed individual	Means — (*a*) a foreign politically-exposed individual; (*b*) a domestic politically-exposed individual; or (*c*) an individual who has been entrusted with a prominent function in an international organisation.
Prominent function	In relation to an international organisation, means the role held by a member of the senior management of the international organisation (including a director, deputy director or member of a board of the international organisation, or an equivalent appointment in the international organisation).
Prominent public function	Includes the role held by a head of state, a head of government, a senior politician, a senior government, judicial or military official, a senior executive of a state-owned corporation or a senior political party official.
Relevant Singapore financial institution	Means — (*a*) a bank in Singapore licensed under section 7 of the Banking Act (Cap 19); (*b*) a merchant bank approved under section 28 of the Monetary Authority of Singapore Act (Cap 186); (*c*) a finance company licensed under section 6 of the Finance Companies Act (Cap 108);

	(*d*) a financial adviser licensed under section 13 of the Financial Advisers Act (Cap 110), except one which is licensed only in respect of the financial advisory service specified in item 2 of the Second Schedule to that Act (namely, advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product); (*e*) a holder of a capital markets services licence granted under section 86 of the Securities and Futures Act (Cap 289); (*f*) a fund management company registered under paragraph 5(7) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap 289, Rg 10); (*g*) a person who is exempt from holding a financial adviser's licence under section 23(1)(f) of the Financial Advisers Act read with regulation 27(1)(d) of the Financial Advisers Regulations (Cap 110, Rg 2), except one who is exempt only in respect of the financial advisory service specified in item 2 of the Second Schedule to that Act (namely, advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product); (*h*) a person who is exempt from holding a capital markets services licence under section 99(1)(h) of the Securities and Futures Act read with paragraph 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations; (*i*) a trustee approved under section 289 of the Securities and Futures Act for a collective investment scheme authorised under section 286 of that Act; (*j*) a trust company licensed under section 5 of the Trust Companies Act (Cap 336); or (*k*) a direct insurer licensed under section 8 of the Insurance Act (Cap 142) to carry on life business.
Suspicious transaction report or STR	Means a report by which a person — (*a*) discloses, under section 39(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A), any knowledge or suspicion referred to in that provision, or the information or other matter on which that knowledge or suspicion is based, to a Suspicious Transaction Reporting Officer; or (*b*) informs, under section 8(1) of the Terrorism (Suppression of Financing) Act (Cap 325), a police officer or Commercial Affairs Officer, of any fact or information referred to in that provision.
Suspicious Transaction Reporting Officer	Has the same meaning as in section 2(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.
Definitions in the Trustees Act, Part VI; Trustees (Transparency and Effective Control) Regulations 2017	
Connected individual	(a) In relation to an entity that is a partnership, means any partner or manager; (b) In relation to a trust or other similar arrangement, means any individual having executive authority in the trust or other similar arrangement; and

	(c) In relation to any other entity, means any director, or any individual having executive authority, in the entity.
Effective controller	Effective controller in relation to a relevant trust party of a relevant trust, means – (a) the individual who ultimately owns or controls the relevant trust party; or (b) the individual on whose behalf a transaction is being conducted by the relevant trust party in the relevant trust party's capacity as such, and includes an individual who exercises ultimate effective control over the relevant trust party;
Prescribed transaction	A transaction that has an aggregate value or amount of more than S$20,000, whether the transaction is carried out in a single operation or multiple operations that appear to be linked.
Relevant party	In relation to a relevant trust, means a relevant trust party of the relevant trust.
Relevant trust party	In relation to a trust, means all or any of the following: (a) a settlor; (b) a trustee; (c) a protector; (d) a beneficiary; and/or (e) a person who has any power over the disposition of any property that is subject to the trust.
Service supplier	An agent of, or a service provider to, the relevant trust (including any investment adviser or manager, accountant, or tax adviser).
Specified person	(a) a financial institution as defined in section 27A(6) of the Monetary Authority of Singapore Act (Cap. 186), read with section 27A(7) of that Act; (b) a casino operator as defined in section 2(1) of the Casino Control Act (Cap. 33A); (c) a licensed operator as defined in section 3(1) of the Estate Agents Act (Cap. 95A); (d) a dealer in precious stones or precious metals as defined in regulation 2 of the Corruption, Drug Trafficking and Other Serious Crimes (Cash Transaction Reports) Regulations 2014 (G.N. No. S 692/2014). (e) an advocate or solicitor who (i) has in force a practicing certificate; or (ii) is a director, a partner, a consultant, or an employee of a law practice, whether or not the advocate and solicitor has in force a practicing certificate; (f) a regulated foreign lawyer as defined in section 2(1) of the Legal Profession Act; (g) a foreign lawyer registered under section 36P of the Legal Profession Act; (h) a notary public as defined in section 2 of the Notaries Public Act (Cap. 208); (i) a public accountant as defined in section 2(1) of the Accountant Act (Cap. 2); or

	(j) a person (not being a person mentioned in paragraph (e) or (f) or a public accountant) who provides one or more of the following services: (i) acting as an agent for the formation of entities; (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a person holding a similar position in any other entity; (iii) providing a registered office, any business address or any accommodation, correspondence, or administrative address for an entity; (iv) acting as (or arranging for another person to act as) a trustee of an express trust, or performing (or arranging for another person to perform) a function equivalent to the function of a trustee in any other similar arrangement; (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

Glossary

FATF	Intergovernmental body known as the Financial Action Task Force created in 1989
CDD	Customer Due Diligence or Client Due Diligence
CDSA	Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed)
DNFBP	Designated Non-Financial Businesses and Professions
ECDD	Enhanced Customer Due Diligence or Enhanced Client Due Diligence
LPA	Legal Profession Act
MER 2016	Singapore Mutual Evaluation Report September 2016
ML	Money laundering
PF	Proliferation financing for nuclear and other weapons of mass destruction
Rules	Legal Profession (Prevention of Money Laundering and Financing of Terrorism) Rules
TF	Terrorism financing
TSOFA	Terrorism (Suppression of Financing) Act (Cap 325, 2003 Rev Ed)

Part 1 - Introduction

Legal practitioners are often, for good and legitimate reasons, the holders of large sums of money involved in commercial transactions and this means that fewer questions are liable to be asked when the lawyers pay out such sums to their clients or to third parties on their clients' instructions. Lawyers are also subject to confidentiality obligations which appeal to those who engage in money laundering activities and wish to hide their identities and activities under the cloak of legal privilege. There is thus a real risk that proceeds of crime could flow into Singapore via local law firms under the pretense of being moneys from legitimate transactions with the remitters wishing to give an appearance of legitimacy to any activity that the money is used for after being "cleansed" through the lawyer's client accounts. Given Singapore's reputation as a jurisdiction with strict controls aimed at eliminating illicit activities, it is all the more important for our solicitors, as potential fiduciary recipients of large sums of money, to understand and comply with obligations that aim to avoid exposing the profession to the risk of unintentionally assisting in the conduct of criminal activity." Judith Prakash JA in Re Chan Chun Hwee Allan [2018] SGHC 21, [35]

In respect of, inter alia, lawyers "The sector presents higher ML/TF vulnerability given that AML/CFT measures and their implementation are not as strong as those in the financial sector." MER 2016 page 19

"…many law practices did not have specific policies or procedures on how to deal with situations where they have to file an STR and the consequential consideration in relation to a client whom they have filed an STR against." MER 2016 page 94

This Practice Direction of the Council of the Law Society of Singapore ('Council') supersedes Practice Direction 1 of 2015. It takes into the consideration the developments in law and practice since 2015, in particular the release by FATF of "Guidance for a Risk-Based Approach Legal Professionals" in 2019.

1.1 Scope of Practice Direction

Part VA of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('Part VA') on the "Prevention of Money Laundering and Financing of Terrorism" and the Legal Profession (Prevention of Money Laundering and Financing of Terrorism) Rules 2015 (S 307/2015) ('Rules') applies to all legal practitioners in Singapore, whether a Singapore admitted advocate and solicitor or foreign law practitioner (section 70A Legal Profession Act).

The Rules are made in accordance with section 70H of the Legal Profession Act.

Legal practitioners and law practices must familiarise themselves with Part VA and the Rules and comply with them.

This Practice Direction sets out directions and guidance on Part VA and the Rules, and must be read together with Part VA and the Rules.

1.2 Summary of the obligations under Part VA and the Rules

In essence, Part VA and the Rules require a legal practitioner and law practice to undertake the following:

(a) Perform CDD measures (section 70C Part VA and Part 2 of the Rules)
A legal practitioner and law practice are required to conduct CDD not only on the client and any individual purporting to act on behalf of a client, but on all the beneficial owners of the client if it is an entity or legal arrangement and to pay particular attention if any persons involved are politically-exposed individuals.

(b) File a suspicious transaction report (section 70D Part VA, Parts 2 and 5 of the Rules)
If the legal practitioner and law practice have suspicions that their client is engaged in money laundering or the financing of terrorism. Failure to file a suspicious transaction report is an offence. The legal practitioner and law practice should note two aspects of this obligation to report in particular:

(i) The legal practitioner and law practice cannot tell anyone that they have reported, including their client, as doing so may amount to 'tipping-off'.

(ii) Failure to disclose any information or other matter which is an item subject to legal privilege is not an offence (CDSA).

Lawyers must also be aware of the rules regarding tipping off. If a lawyer suspects that a client may be engaged in money laundering or the financing of terrorism, and the lawyer has reasonable grounds to believe that the performance of any CDD measures will tip-off the client, by rule 16 of the Rules, the lawyer —

(a) need not perform those CDD measures; **but**

(b) must instead file a suspicious transaction report with either or both of the following (as the case may be):

(i) a Suspicious Transaction Reporting Officer, if the client may be engaged in money laundering; and/or

(ii) a police officer or Commercial Affairs Officer, if the client may be engaged in the financing of terrorism.

(c) Maintain all documents and records (section 70E Part VA and Part 3 of the Rules)
Relating to each relevant matter, and all documents and records obtained through CDD measures.

(d) For legal practitioners acting as trustees, the following CDD measures are necessary (section 84A of the Trustees Act).

(i) Obligation to perform CDD measures on relevant parties, effective controllers of relevant parties, as well as service suppliers: Within a specified time limitation, the legal practitioner must take reasonable steps to ensure that information about these parties is obtained and verified.

(ii) Obligation to disclose that trustee is acting for a relevant trust: If a trustee of a relevant trust, when acting for the relevant trust, forms a business relationship with any specified person after 30 April 2017, the trustee must, at or before the time the business relationship is formed, take reasonable steps to inform the specified person that the trustee is acting for the relevant trust.

(iii) Obligation to keep accounting records: A trustee of a relevant trust must take reasonable steps to ensure that there are kept in respect of the relevant trust, accounting records in the format explained below and in, Trustees Act, Trustees (Transparency and Effective Control) Regulations 2017, at 9(2) and 9(3).

1.3 Terminology used in this Practice Direction

Terms in the Legal Profession Act and the Rules have the same meaning in this Practice Direction, unless the context requires otherwise.

You – refers to a legal practitioner or law practice.

Must – refers to a specific requirement in legislation. You must comply unless there are statutory exemptions or defences.

Should – it is good practice in most situations, and these may not be the only means of complying with legislative requirements.

May – a non-exhaustive list of options to choose from to meet your obligations.

1.4 Money laundering and financing of terrorism

Part VA and the Rules set out the measures which a legal practitioner and law practice must take, when preparing for or carrying out any transaction concerning a relevant matter with a view to preventing the transaction from being used to facilitate either or both money laundering and the financing of terrorism.

1.4.1 Definition of money laundering and financing of terrorism

Money laundering is a process by which criminals attempt to conceal the true origin and ownership of money and other benefits derived from criminal conduct so that the money and other benefits appear to have a legitimate source.

Generally, money laundering involves three (3) stages, in the following order:

(a) Placement – This is the physical movement of the benefits (usually cash) from criminal conduct.

(b) Layering – This is the process of separating the benefits of criminal conduct from the illegitimate source through layers of financial transactions to disguise the audit trail.

(c) Integration – If the layering process is successful, the integration stage will place the laundered money and other benefits back into the economy so that they appear to be legitimate.

1.4.2 Legislation applicable to all persons

Legislation that applies to all persons in relation to money laundering is the CDSA; and legislation in relation to terrorism financing that applies to all persons is the TSOFA.

It is an offence under section 43 of the CDSA to assist another to retain benefits of drug dealing, and an offence under section 44 of the CDSA to assist another to retain benefits from criminal conduct.

Legal practitioners should refer to the TSOFA to understand what constitutes a terrorist financing offence under the TSOFA, what the prohibitions are and what the duty to disclose entails in relation to terrorist financing. Unlike money laundering, the source of terrorist financing may be legitimate or illegitimate.

Under the TSOFA, a terrorist is defined as anyone who commits, or attempts to commit, any terrorist act or participates in or facilitates the commission of any terrorist act. It also includes any person set out in the First Schedule of the TSOFA. The First Schedule refers to specific individuals, all individuals and entities belonging to or associated with the Taliban in the Taliban List, and all individuals and entities belonging to or associated with the Al-Qaida organization in the Al-Qaida List. (The latest updates to the Lists can be found at the relevant weblinks on the Law Society's website on Measures on Anti-Money Laundering and Counter- Terrorism Financing.) Sections 3 to 6 of the TSOFA expressly prohibit the following:

(a) provision and collection of property for terrorist acts;
(b) provision of property or services for terrorist purposes;
(c) use or possession of property for terrorist purposes; and
(d) dealing with property of terrorists or terrorist entity.

Legal practitioners and law practices must familiarise themselves with the CDSA and the TSOFA and comply with the same.

1.5 Relevant matter

Part VA and the Rules apply to a legal practitioner and law practice preparing for or carrying out any transaction concerning a relevant matter.

The definition of "relevant matter" in the Legal Profession Act includes the "management of client's moneys, securities or other assets, or of bank, savings or securities accounts". This involves doing more than merely opening a client account, and will likely cover a legal practitioner acting as a trustee, attorney or a receiver.

If a transaction does not concern a relevant matter, then the obligations under Part VA and the Rules do not need to be observed although, clearly, good due diligence on one's client is always good practice. Please note that the CDSA and TSOFA imposes substantive legal obligations that are not necessarily connected directly with CDD. Their applicability is therefore **not** dependent on whether the matter is a relevant matter.

If you are uncertain whether Part VA and the Rules apply to your work generally or in a specific case, simply take the broadest of the possible approaches to comply with the statutory requirements. You can seek guidance from the Law Society.

Unless it is a matter that is unusual in the ordinary course of business, having regard to the complexity of the matter, the quantum involved, any apparent economic or lawful purpose of the matter, and the business and risk profile of the client, the following are some examples of transactions and matters which Part VA and the Rules would not apply to:

(a) General Singapore law advice with no specific or substantial association with any transaction or matter.
(b) Transactions and matters pertaining to intellectual property rights.
(c) Acting for a client to apply for a grant of probate or letters of administration as a personal representative of an estate.
(d) Acting for a client in a family law matter to obtain a decree of nullity or divorce or custody/access of children.
(e) Appearing or pleading in any court of justice in Singapore, representing a client in any proceedings instituted in such a court or giving advice, the main purpose of which is to advise the client on the conduct of such proceedings.
(f) Appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal, including an arbitral tribunal, in Singapore.

Part 2 – Risk Assessment, Internal Policies, Procedures and Controls

2.1 Assessing your law practice's risk profile

A law practice must take appropriate steps to identify, assess and understand, its money laundering and terrorism financing risks, taking into account the law practice's size, type of clients, countries or jurisdictions its clients are from and the practice areas it engages in.

The appropriate steps must include:

(a) documenting the law practice's risk assessments;
(b) considering all the relevant risk factors before determining the level of overall risk and the appropriate type and extent of mitigation to be applied;
(c) keeping these risk assessments up to date; and
(d) having appropriate mechanisms to provide risk assessment information to the Council.

2.1.1 Programmes for the prevention of money laundering and the financing of terrorism

Rule 18(1) of the Rules requires a law practice to implement programmes for the prevention of money laundering and the financing of terrorism which have regard to:

(a) the risks of money laundering and the financing of terrorism; and
(b) the size of the law practice.

Taking into account the risks that have been identified and the size of a law practice, a law practice must develop programmes for the prevention of money laundering and the financing of terrorism. This should include an assessment of the level of exposure the practice has to overseas clients and the risk that these clients and/or their beneficial owners may be PEPs or subject to sanctions.

If there is a significant risk, law practices are strongly encouraged to subscribe to a reliable commercial database that will allow you to screen customers for ML/TF/PF/sanctions.

2.1.2 Group–wide programmes for a Singapore law practice with any branch or subsidiary

If a Singapore law practice has any branch or subsidiary (whether in Singapore or elsewhere), the Singapore law practice must implement group-wide programmes for the prevention of money laundering and the financing of terrorism that apply to, and are appropriate for (rule 18(2) of the Rules) —

(a) every such branch; and
(b) every such subsidiary more than 50% of the shares or other equity interests of which are owned by the Singapore law practice.

If a Singapore law practice has any foreign branch or foreign subsidiary, the Singapore law practice must, as far as possible, ensure that every such foreign branch and foreign subsidiary apply measures for the prevention of money laundering and the financing of terrorism that are consistent with the measures that are applicable in Singapore (rule 18(4) of the Rules).

A 'Singapore law practice' does not include a Qualifying Foreign Law Practice, a licensed foreign law practice, the constituent foreign law practice of a Joint Law Venture, or a foreign law practice which is a member of a Formal Law Alliance.

In the case of a subsidiary that is not a law practice and which is required to apply measures for the prevention of money laundering and terrorism financing that are applicable in Singapore to the local subsidiary (such as those in the Accounting and Corporate Regulatory Authority (Filing Agents and Qualified Individuals) Regulations 2015 (S 198/2015)) it will suffice for the law practice to ensure that the subsidiary applies those measures.

2.1.3 Internal policies, procedures and controls

The programmes that a law practice must implement, and the group-wide programmes a Singapore law practice (with any branch or subsidiary) must implement must include the following (rule 18(3) of the Rules):

(a) the development and implementation of internal policies, procedures and controls for the prevention of money laundering and the financing of terrorism, including –

(i) appropriate compliance management arrangements; and
(ii) adequate screening procedures when hiring employees;

(b) the confirmation of the implementation, and the review, by an independent party of the internal policies, procedures and controls.

These programmes must include training and a law practice must ensure that its partners, directors and employees are regularly and appropriately trained on (rule 18(5) of the Rules) –

(a) the laws and regulations relating to the prevention of money laundering and the financing of terrorism; and
(b) the law practice's internal policies, procedures and controls for the prevention of money laundering and the financing of terrorism.

The issues which may be covered in the internal policies, procedures and controls include:

(a) the CDD measures to be met for low risk clients;
(b) the enhanced CDD measure to be met for higher risk clients;
(c) the CDD measures to determine if a client is a politically-exposed individual or a family member or close associate of such an individual;
(d) the ongoing CDD measures and enhanced ongoing monitoring (if any) that have to be met;
(e) the conditions to be met for reliance on CDD measures performed by third parties; and
(f) the circumstances in which deferral of the completion of CDD measures is permitted.
(g) whether you should subscribe to a suitable commercial screening service.
(h) the relevant procedure for making STR and Cross Border Cash Movement Reports.
(i) a prohibition against opening or maintaining accounts, or to hold or receive monies from an anonymous source or a client with an obviously fictitious name.

Compliance management arrangements

Compliance management arrangements (referred to in rule 18(3) of the Rules) means carrying out regular review, assessment and updates of the internal policies, procedures and controls to ensure that they are adequate and they manage the money laundering and financing of terrorism risks effectively.

Screening procedures

Employees: The screening of new employees (referred to in rule 18(3) of the Rules) can be done by including relevant questions in the law practice's employment application form, for example, whether the person has been convicted of any offence of dishonesty or fraud, whether the person has been sentenced to a term of imprisonment, and whether the person is an undischarged bankrupt. The employee should also make the requisite declarations when executing the statutory declarations as required by section 78(7) LPA. In Singapore it is not possible to check with the Criminal Records Office whether a person has a criminal record, so it is not necessary to do that.

Clients: As part of your risk assessment you should decide whether you should subscribe to a reliable commercial screening service. Such services will allow you to screen persons against consolidated sanctions lists as well as help you identify potential PEPs or individuals and entities who, for any reason, pose a risk. Clients, and in the case of legal persons, the beneficial owners and representatives of the clients, should be screened when you are being instructed in a Relevant Matter.

If you have assessed that your risk profile does not warrant such a subscription, then you should at least conduct an internet search. When conducting an internet search, appropriate known identifier information (such as the person's nationality or country of birth) ought to be included to help filter the results to a manageable number.

Whatever the screening method adopted might be, the outcome ought to be printed out or stored electronically for reference.

Such screening is not a substitute for you making necessary inquiries of the client to ensure that you truly know him or her and are able to assess whether they potentially pose a risk.

Confirmation and review by an independent party
The requirement of the confirmation and review by an independent party (referred to in rule 18(3) of the Rules) may be satisfied through (but not limited to):

(a) the appointment of an external auditor to carry out the confirmation and review; or
(b) the appointment of a suitably experienced professional within the same law practice to carry out the confirmation and review.

2.1.4 Training

Training may cover the following areas:

(a) money laundering and financing of terrorism vulnerabilities of a law practice;
(b) the impact that money laundering and financing of terrorism may have on a law practice, its business, clients and employees;
(c) effective ways of determining whether clients are politically-exposed individuals;
(d) client and business relationship risk factors;
(e) the different CDD measures that have to be performed;
(f) how to deal with suspicious activities and transactions;
(g) suspicious transaction reporting; and
(h) the internal policies, procedures and controls that have been put in place to reduce and manage money laundering and financing of terrorism risks.

The training frequency should be sufficient to maintain the knowledge and competence of partners, directors and employees to apply CDD measures appropriately.
Training can take many forms and may include:

(a) attendance at conferences, seminars, or training courses organised by the Law Society or other organisations;
(b) completion of online training sessions;
(c) law practice or practice group meetings for discussion on prevention of money laundering and financing of terrorism issues and risk factors; and
(d) review of publications on current prevention of money laundering and financing of terrorism issues.

2.2 Assessing individual risks

You must assess the risks posed by a specific client or retainer. Determining the risks posed by a specific client or retainer will then assist in applying the internal procedures and controls in a proportionate and effective manner.

Part 3 – Customer Due Diligence ('CDD') in Relation to a Client

3.1 CDD in general

CDD refers to due diligence measures performed by a legal practitioner or law practice in relation to a client. The term 'client' and 'customer' are synonymous and interchangeable.

In preparing for or carrying out any transaction concerning a relevant matter, you must perform the CDD measures prescribed in the Rules. CDD is required because you can better identify suspicious transactions if you know your clients and understand the reasoning behind the instructions given by your clients.

CDD measures may be performed by a third party in circumstances set out in rule 17 of the Rules.

You can start working for a client before the CDD is completed. However, you must complete the CDD as soon as is reasonably practicable. If you are unable to complete it, then you must not commence a new business relationship, must terminate any existing business relationship with the client and must not undertake any transaction for the client (see paragraph 3.15).

A business relationship refers to the client relationship.

3.2 Principal components of CDD

The principal components of CDD are:

(a) Identification and verification of the identity of the client.
(b) Identification and verification of the beneficial owners (if the client is an entity or legal arrangement).
(c) Understanding the nature of the client's business, and the ownership and control structure of the client (if the client is an entity or legal arrangement).
(d) Reasonable measures to determine whether the client and beneficial owner (if any) is a politically-exposed individual, or a family member or close associate of any such individual.
(e) Obtaining information on the purpose and intended nature of the business relationship.
(f) Ongoing CDD.
(g) Enhanced CDD, where required:
    (i) establish the source of wealth and the source of funds;
    (ii) obtain the approval of senior management; and
    (iii) enhanced ongoing monitoring.
(h) Require that the client's first payment be carried out through an account in the customer's name with a bank subject to similar CDD standards.

3.3 Risk-based approach

Singapore has adopted the risk based approach ("RBA") as recommended by FATF, in combatting money laundering and terrorist financing. This means that you have the flexibility to calibrate the CDD measures you take in a specific case according to what you assess to be the risks. (rule 12(1) of the Rules). In other words, it is not a case of one size fits all.

In practical terms this means that you must —

(a) perform, in relation to each client, an adequate analysis of the risks of money laundering and the financing of terrorism;
(b) document the analysis and the conclusions reached; and

(c) keep the analysis up to date. (rule 12(2) of the Rules)

For an adequate analysis of the risks of money laundering and the financing of terrorism, you should take the following steps:

(a) Identify and assess the money laundering and the financing of terrorism risks based on the following factors:
  (i) The type of client —
    (A) whether the client is a new client or an existing client;
    (B) whether the client is an individual or entity or legal arrangement;
    (C) whether the client is a politically-exposed individual or close associate or family member of a politically-exposed individual; and
    (D) whether the client is from a country where there is a higher risk of money laundering or financing of terrorism.
  (ii) The business relationship with the client.
(b) Determine if the client is a higher risk client.
(c) Determine if the business relationship is a higher risk business relationship.
(d) Determine if there are reasonable grounds to suspect the client is engaged in money laundering or the financing of terrorism.

There are no universally accepted methodologies that prescribe the nature and extent of a risk based approach. Ultimately, you as a practitioner are in the best position to know the profile of your clients and the kinds of matters that they instruct you on. You are therefore in the best position to determine what steps you should be taking to address any possible risks of money laundering / terrorist financing which may be presented. It is absolutely critical that you document the basis of your risk assessment. This will come in useful if you are ever subject to an audit.

3.4 Lower risks

The risks of money laundering and the financing of terrorism are lowered if the client is any of the following (rule 12(3) of the Rules):

(a) a Ministry or department of the Government, an organ of State or a statutory board;
(b) a ministry or department of the government of a foreign country or territory;
(c) an entity listed on a securities exchange as defined in section 2(1) of the Securities and Futures Act (Cap 289), or a subsidiary of such an entity more than 50% of the shares or other equity interests of which are owned by the entity;
(d) an entity listed on a stock exchange outside Singapore that is subject to regulatory disclosure requirements;
(e) a relevant Singapore financial institution;
(f) a financial institution incorporated or established outside Singapore that is subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF;
(g) an investment vehicle every manager of which is a financial institution referred to in sub-paragraph (e) or (f);
(h) any of the following universities in Singapore:
  (i) Nanyang Technological University;
  (ii) National University of Singapore;
  (iii) Singapore Institute of Technology;
  (iv) Singapore Management University;
  (v) Singapore University of Technology and Design;
(i) a Government school as defined in section 2 of the Education Act (Cap 87);
(j) the Society;
(k) an entity that is made up of regulated professionals who are subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF.

With regard to paragraph (d) above, a stock exchange outside Singapore includes but is not limited to any stock exchange which has been declared by the Monetary Authority of Singapore, by order published in the Gazette, to be a recognised securities exchange.

There may be other cases where the risks might be considered lower. If so, you must ensure that this is properly documented.

3.5 High risk factors

Examples of high risk factors may include but are not limited to the following:

(a) Type of client (Client risk factors)
- (i) Non-resident client and client who has no address or multiple addresses.
- (ii) Client or beneficial owner who is a politically-exposed individual or a family member or close associate of any such individual (see paragraph 3.14).
- (iii) Legal persons or arrangements that are personal asset holding vehicles.
- (iv) Companies with nominee shareholders or bearer shares.
- (v) Businesses that are cash-intensive.
- (vi) Client with criminal convictions involving fraud or dishonesty.
- (vii) Client shows an unusual familiarity with respect to the ordinary standards provided for by the law in the matter of satisfactory client identification.
- (viii) Client who asks for short-cuts and unexplained speed in completing the transaction.
- (ix) Client is overly secretive or evasive (for example, of who the beneficial owner is, or the source of funds).
- (x) Client is actively avoiding personal contact without good reason.
- (xi) Client is willing to pay fees without requirement for legal work to be undertaken (other than deposits as requested by you in advance of the work to be undertaken).

(b) Type of client (Country/territory risk factors)
- (i) Client is from or in any country or jurisdiction in relation to which the FATF has called for countermeasures or enhanced client due diligence measures (see paragraph 3.14).
- (ii) Client is from or in any country or jurisdiction known to have inadequate measures to prevent money laundering and the financing of terrorism (see paragraph 3.14).

(c) The business relationship with the client
- (i) Instructions to a legal practitioner or law practice at a distance from the client or transaction without legitimate or economic reason.
- (ii) Instructions to a legal practitioner or law practice without experience in a particular specialty or without experience in providing services in complicated or especially large transactions.
- (iii) Use of client account without underlying legal services provided.
- (iv) Payments are made by the client in actual cash (in the form of notes and coins).
- (v) The transaction relates to, any country or jurisdiction in relation to which the FATF has called for countermeasures or enhanced client due diligence measures (see paragraph 3.14).
- (vi) Disproportionate amount of private funding for the purchase of real estate/property which is inconsistent with the socio-economic profile of the client.
- (vii) Large cash payments made for purchase of interest in land whose value is far less, or the method of funding is unusual such as funding from a third party who is not a relative or known to the buyer, or there is an absence of any logical explanation from the parties why the property is owned by multiple owners or by nominee companies.

(viii) Unusually high levels of assets or unusually large transactions in relation to what might reasonably be expected of clients with a similar profile.
(ix) Transfer of real estate between parties in an unusually short time period.
(x) Requests by the client for payments to third parties without substantiating reason or corresponding transaction.
(xi) Instructions by the client for the creation of complicated ownership structures where there is no legitimate or economic reason.
(xii) Disputes which are settled too easily, with little involvement by the legal practitioner or law practice (may indicate sham litigation).
(xiii) Abandoned transactions with no concern for the fee level.
(xiv) Loss making transactions where the loss is avoidable.
(xv) An absence of documentation to support the client's story, previous transactions or company activities.
(xvi) Unexplained use of express trusts.
(xvii) Unexplained delegation of authority by the client through the use of powers of attorney, mixed boards and representative offices.
(xviii) In the case of express trusts, an unexplained relationship between a settlor and beneficiaries with a vested right, other beneficiaries and persons who are the object of a power.
(xix) In the case of an express trust, an unexplained (where explanation is warranted) nature of classes of beneficiaries and classes within an expression of wishes.

The mere presence of risk factors is not necessarily a basis for suspecting money laundering or the financing of terrorism, as a client may be able to provide a legitimate explanation. Risk factors should assist you in applying a risk-based approach to your CDD requirements of knowing who your client and the beneficial owners are, understanding the nature and the purpose of the business relationship between you and the client, and understanding the source of wealth and the source of funds of the client.

If a client is unable to provide an adequate, satisfactory and credible explanation in response to an enquiry, that inability by itself does not necessarily constitute a sufficient basis to impute criminal activity on the part of the client. It simply means that further enquiry is required, and where responses are not credible, or your suspicions are not adequately allayed by the responses, you should not accept any further instructions from the client, and you must terminate the existing business relationship and consider whether to file a suspicious transaction report.

3.5A Specific situations

(a) You must not open or maintain any account for or hold and receive money from an anonymous source, or a client with an obviously fictitious name (Section 70B Part VA).

(b) If there are reasonable grounds to suspect that a client may be engaged in money laundering or the financing of terrorism, you must not establish any new business relationship with, or undertake any new matter for, the client; and must file a suspicious transaction report (rule 5 of the Rules).

(c) The creation, operation or management of a company includes:
a. Acting or arranging for another person to act as a director, secretary of a corporation or its equivalent in other legal entities;
b. Acting or arranging for another person to act as a partner in a partnership or its equivalent in other entities;
c. Providing a registered office, business or correspondence address, or other related services for a corporation, partnership or other legal entity; and/or

d. Acting or arranging for another person to act as a shareholder on behalf of any corporation other than a corporation whose securities are listed on a securities exchange or recognised securities exchange within the meaning of the Securities and Futures Act.

(d) You should be cautious when receiving unusual amounts of cash from your client. In particular, bear in mind the obligation under s48E of the CDSA which requires you to report receipt of cash exceeding the value of S$20,000.00 which originates from outside Singapore.

(e) Be careful of arrangements where you end up as no more than a financial conduit, receiving money from one source and routing it to another. An illustration of this can be found in the facts of Re Chan Chun Hwee Allan [2018] SGHC 21. The practitioner was introduced to an Australian who requested that the practitioner act for 2 companies. In particular, he was to receive monies on behalf of the companies and transmit them onwards as instructed. The practitioner was given vague descriptions of the nature of the payments, which he subsequently accepted without any critical examination. For this very simple work he was allowed to keep 5% of the monies received. The practitioner's bank queried why he was transmitting funds when his client could just as easily transfer the monies themselves. He was unable to provide an explanation. He was ultimately charged and convicted for failing to do CDD on his client.

Persons who are not able to open bank accounts or execute transactions may resort to instructing lawyers to assist them in receiving and transmitting funds, taking advantage of the anonymity afforded to them by using the account in the name of the law practice.

3.6 Basic CDD

You must perform the following CDD measures:

3.6.1 Identification and verification of the identity of the client

If the client is an individual

If your client is an individual, you must first ascertain the identity of the client. You must also verify your client's identity using objectively reliable and independent source documents, data or information (rules 6(1)(*a*) and 6(1)(*b*) of the Rules).

You are encouraged to use a wide range of sources when verifying the identity of the client including 'google searches', conversations with the client and reliable individuals, and, in appropriate cases checks with reliable commercial screening services. With internet searches, it is important to apply appropriate search parameters so as to generate results that are manageable to review.

To ascertain the identity of a client, you must at least obtain and record the following information:

(a) full name, including any alias;
(b) date of birth;
(c) nationality; and
(d) residential address.

If it is necessary you should also obtain information on the client's occupation and address of the employer; or if self-employed, the name and place of the client's business. Similarly, if required, you should understand the source of funds and source of wealth of the client.

You must verify the client's identity using objectively reliable and independent source documents, data or information to ensure that the information obtained and recorded is authentic. Examples of objectively reliable and independent source documents include the following original documents:

(a) identity cards;
(b) passports;
(c) driving licences;
(d) work permits; and
(e) other appropriate photo identification.

Please note that law practices are permitted to collect personal data for the purposes of providing legal services (Personal Data Protection Act). If your client is unable to produce original documents, and there is a reasonable explanation for not doing so, you may consider accepting copies. If appropriate, you may require that these documents be certified as true copies by other professionals (for example, lawyers or notaries), but this is not necessary if it is a straightforward matter and the risks of ML\FT and misidentification of the client are low.

If you are unable to meet the client face to face, you may rely on a copy of the identity document(s). If appropriate, you may require that these documents be certified as true copies by other professionals (for example, lawyers or notaries), but this is not necessary if it is a straightforward matter and the risks of ML\FT and misidentification of the client are low. You may consider alternative measures such as getting the client to allow you to inspect his original identity document over a video call. You should look out for obvious forgeries, but you are not required to be an expert in forged documents.

You should understand the exact nature of the work that you are being engaged to perform and understand how such engagement could facilitate the movement or obscure the provenance of the proceeds of crime. Where you do not have the requisite expertise to understand the engagement, you should not undertake the work. You need to be reasonably satisfied that there is a commercial or personal rationale for the work to be done. Do not accept vague answers such as "for business purposes".

If the client is an entity or legal arrangement

If your client is an entity or legal arrangement, you must ascertain the identity the client, and verify the client's identity, respectively, through the following information (rule 6(2) of the Rules) –

(a) the name of the client;
(b) the legal form of the client;
(c) the documents that prove the existence of the client;
(d) the documents that regulate and bind the client;
(e) the individuals in the senior management of the client;
(f) the address of the registered office of the client; and
(g) the address of the principal place of business of the client, if the registered office of the client is not a principal place of business of the client.

You must obtain and record the following information –

(a) full name;
(b) incorporation number or registration number;
(c) address of place of business or registered office address and telephone number;
(d) the date of incorporation or registration; and
(e) the place of incorporation or registration.

(A) Singapore sole proprietorship, partnership, limited partnership, limited liability partnership, or a company

If your client is a Singapore sole proprietorship, partnership, limited partnership, limited liability partnership, or a company, a profile of the entity obtained from the Accounting and Corporate Regulatory Authority's ('ACRA') database is generally sufficient to establish the existence of the client and that it is incorporated/registered in Singapore, the name and legal form of the client, the identities of its directors/partners (including individuals in the senior management), the address of the registered office and the address of the principal place of business.

You should obtain from your client the documents that regulate and bind the client (such as the constitution, or the memorandum and articles of association, of a company, if the client is a company, or the trust deed of an express trust, if the client is an express trust).

(B) Foreign entity

For an overseas sole proprietorship, partnership, limited partnership, limited liability partnership, or a company, the same particulars as required for a Singapore entity must be obtained. If the necessary documents cannot be obtained from a body in a foreign country equivalent to ACRA, the entity's identity could be verified independently by a person/body responsible in that foreign country for the regulation of companies or by another professional or by other reasonable means.

(As a guide, a non-exhaustive list of foreign regulators of companies can be found at the following link – http://www.ecrforum.org/worldwide-registers/)

If you are satisfied that there is little or no risk of money laundering or terrorist financing or such risk is low and you have no suspicions of the same, you may obtain information on the identity of the client from (i) a structure chart (of the entity) provided by the client directly or (ii) information available on the client's website or (iii) information available from the client's annual reports or (iv) information from any publicly known source that is reliable.

(C) Trusts

Before acting for a trust, you must, ascertain the identity and particulars of each trustee, relevant party, effective controllers, and service suppliers (trustees must be identified in accordance with their categorisation, natural person or company etc) and the nature of the trust.

(For legal practitioners who act as trustees, please refer to paragraph 3.11.)

(D) Attorneys

If you are acting for an attorney, you must identify both the principal and the attorney.

You must cease or refuse to act for a client who gives a power of attorney in favour of any person without any apparent reason and refuses to explain why a power of attorney is given and/or is reluctant to provide the identity documents of the attorney.

(E) Singapore charities, clubs and societies

If you are acting for a charity or a society, you must check that the registration number for the charity or society or club is correct. For charities, you should check with the Commissioner for Charity and for societies, the Registrar of Societies.

You must obtain the names of all trustees and officers of the charity, club or society before accepting the retainer.

(F) Foreign charities, clubs and societies

For an overseas charity, club and society, the same particulars as required for a Singapore charity, club and society must be obtained. If the necessary information cannot be obtained from a body in a foreign country equivalent to the Commissioner for Charity or the Registrar of Societies, the entity's identity could be verified independently by a person/body responsible in that foreign country for the regulation of charities, clubs and societies or by another professional or by other reasonable means.

(G) Singapore co-operatives

If you are instructed to act for a co-operative society, you must check the registration particulars of the co-operative or check the same with the Registrar of Co-operative Societies. You must obtain the names of the members of the committee of management and officers of the co-operative before accepting the retainer.

(H) Management corporations

If you are acting for a management corporation ('MCST'), you must obtain the names of all officers of the Management Council of the MCST before accepting the retainer.

(I) Estates

If you are instructed to act for an estate, you must have sight of the death certificate and if applicable, the original will or a certified true copy of the will of the deceased. You must also obtain the relevant identity documents to establish the identities of the executors or administrators of the deceased estate and where applicable, the original or certified true copy of the letters of administration or probate.

3.6.2 Identification and verification of the beneficial owners (if the client is an entity or legal arrangement)

If the client is an entity or legal arrangement, you must (rule 8 of the Rules):

(a) ascertain whether the client has any beneficial owner;
(b) ascertain the identity of each beneficial owner (if any);
(c) take reasonable measures to verify the identity of each beneficial owner (if any) using objectively reliable and independent source documents, data or information;
(d) understand the nature of the client's business;
(e) understand the ownership and control structure of the client;

Beneficial owner

The client due diligence measures you must perform under paragraphs 3.6.2(b) and 3.6.2(c) above include identifying, and taking reasonable measures to verify the identity of, each beneficial owner of the client, through the following information:

(i) the identity of each individual (if any) who has a controlling ownership interest in the client;

(ii) if there is any doubt as to whether an individual who has a controlling ownership interest in the client is a beneficial owner of the client, or if there is no individual who has a controlling ownership interest in the client, the identity of each individual (if any) who has control of the client through other means;

(iii) if there is no individual who has a controlling ownership interest in the client or who has control of the client through other means, the identity of each individual in the senior management of the client.

What constitutes a controlling ownership interest is a question of fact in each case but in any case, you should treat direct or indirect control of more than 25% of the shares or voting rights of the client as a controlling interest.

If there is any doubt as to whether an individual who has a controlling ownership interest in the client is a beneficial owner of the client, or if there is no individual who has a controlling ownership interest in the client, you must ascertain and take reasonable measures to verify the identity of each individual (if any) who has control of the client through other means.

If there is no individual who has a controlling ownership interest in the client or who has control of the client through other means, you must ascertain and take reasonable measures to verify the identity of each individual in the senior management of the client, such as a chief executive officer, chief financial officer, managing or executive director, or president.

If the client is a legal arrangement, the client due diligence measures that you must perform under paragraphs 3.6.2(b) and 3.6.2(c) above include identifying, and taking reasonable measures to verify the identity of, each beneficial owner of the client, through the following information:

(a) if the client is an express trust, the identities of the settlor, each trustee, the protector (if any) and each beneficiary or class of beneficiaries of the trust, and any other individual exercising effective control over the client (including through a chain of control or ownership);

(b) if the client is any other legal arrangement, the identity of each person in an equivalent or a similar position to a settlor, trustee, protector or beneficiary of a trust, or any other individual exercising effective control over the client (including through a chain of control or ownership).

Reasonable measures to verify identity of beneficial owner

Ascertaining and verifying the beneficial owners of a legal person is often a very difficult exercise as this information is rarely publicly available in a reliable form. You are only obliged to take reasonable measures, which will depend on the risk assessment that you make. You may rely on information provided by the client (for example, a declaration by the client about its beneficial owner(s)), or information that is publicly known.

Other reasonable measures may include the following:

(a) using objectively reliable and independent source information or documents such as the business profile obtained from ACRA, or from a body in a foreign country equivalent to ACRA;

(b) using information, documents or data provided by the client, and arranging a face-to-face meeting with the beneficial owner (where necessary) to corroborate the information given by the client; or
(c) researching publicly available information on the beneficial owner.

(A) Company, foreign company, limited liability partnership

The beneficial owner of a company, foreign company and limited liability partnership, is any individual who:

(a) ultimately owns or controls (whether through direct or indirect ownership or control) more than 25% of the shares or voting rights of the client; or
(b) otherwise exercises effective control over the management of the client.

(B) Partnership

The beneficial owner of a partnership, is any individual who:

(a) is ultimately entitled to or controls (whether the entitlement or control is direct or indirect) more than 25% of the share of the capital or profits or more than 25% of the voting rights of the partnership; or
(b) otherwise exercises effective control over the management of the partnership.

(C) Trust

The beneficial owner:

(a) of a trust includes any individual who is entitled to a vested interest in at least 25% of the capital of the trust property. 'Vested interest' is defined as an interest that a person is currently entitled to, without any pre-conditions needing to be fulfilled;
(b) of a trust includes any individual who has control over the trust. 'Control' is defined as a power whether exercisable alone, jointly with another person or with the consent of another person under the trust instrument or by law: to dispose of, advance, lend, invest, pay or apply trust property; vary the trust; add or remove a person as a beneficiary to or from a class of beneficiaries; appoint or remove trustees; or direct, withhold consent to or veto the exercise of any of the above powers; or
(c) of a trust other than one which is set up or which operates entirely for the benefit of individuals entitled to a vested interest in at least 25% of the capital of the trust property, includes the class of persons in whose main interest the trust is set up or operates, and the class must be described.

(D) Other legal arrangements

The beneficial owners of other legal arrangements are:

(a) where the individuals who benefit from the legal arrangement have been determined, any individual who benefits from at least 25% of the property of the legal arrangement;
(b) where the individuals who benefit from the legal arrangement have yet to be determined, the class of persons in whose main interests the legal arrangement is set up or operates; or
(c) an individual who controls at least 25% of the property of the legal arrangement.

Understanding the nature of business, ownership and control

To understand the nature of the client's business, and to understand the ownership and control structure of the client, you may rely on the following:

(a) Information provided by the client.
(b) Information available on the client's website.
(c) Information available from the client's annual reports.
(d) Information from any publicly known source that is reliable.

To better understand the ownership and control structure, it would be prudent to monitor changes (if any) in instructions, or transactions which suggest that someone is trying to undertake or manipulate a retainer for criminal ends.

3.6.3 Reasonable measures to determine whether a client and beneficial owner is a politically exposed individual, or a family member or close associate of any such individual

You must take reasonable measures to determine if the client is a politically exposed individual, or a family member or close associate of any such individual (rule 6(1)(*c*) of the Rules).

If the client is an entity or legal arrangement, you must take reasonable measures to determine whether each beneficial owner (if any) is a politically-exposed individual, or a family member or close associate of any such individual (rule 8(1)(*d*) of the Rules).

A close associate in relation to a politically exposed individual is an individual who is known to you or is publicly known to be, closely connected to the politically-exposed individual, either socially or professionally. Based on the FATF Guidance dated June 2013 on "Politically Exposed Persons (Recommendations 12 and 22)", this includes partners outside the family unit (for example, girlfriends, boyfriends, mistresses); business partners or associates.

The reasonable measures referred to in rules 6(1)(*c*) and 8(1)(*d*) of the Rules include putting in place risk management systems to determine whether a client or beneficial owner is a politically-exposed individual or a family member or close associate of such an individual. Such reasonable measures may take into consideration the following:

(a) You are not required to conduct extensive investigations to establish whether a client is a politically exposed individual or a family member or close associate of any such individual. Just have regard to information that is in your possession or publicly known. With regard to information that is in your possession, this may be information provided to you by the client.
(b) If you have reason to suspect that a client is a politically exposed individual or a family member or close associate of any such individual, you should conduct some form of electronic verification. An Internet based search engine (including social media) may be sufficient for these purposes. If warranted, you can screen the individuals with a reliable commercial screening service.

A foreign politically exposed individual and a domestic politically-exposed individual are defined in the Rules to mean an individual who is or has been entrusted with a prominent public function. According to FATF, the handling of a client who is no longer entrusted with a prominent public function should be based on an assessment of risk and not on prescribed time limits. Possible risk factors are:

(a) the level of (informal) influence that the individual could still exercise; the seniority of the position that the individual held as a politically exposed individual; or

(b) whether the individual's previous and current function are linked in any way (for example, formally by appointment of the politically-exposed individual's successor, or informally by the fact that the politically-exposed individual continues to deal with the same substantive matters).

If the client is:

(a) a foreign politically-exposed individual or a family member or close associate of any such individual; or

(b) a domestic politically-exposed individual/individual entrusted with a prominent function in an international organisation or a family member or close associate of any such individual (and where there is a higher risk business relationship);

you can still act on behalf of the client, but you should undertake enhanced due diligence and monitor the client (see paragraph 3.14).

3.6.4 Obtaining information on the purpose and intended nature of the business relationship

You must identify and if appropriate, obtain information on the purpose and intended nature of the business relationship with the client (rule 9 of the Rules).

For the purposes of rule 9 of the Rules, you must identity and if appropriate, obtain information concerning the retainer, and transaction and/or advice that you are proposing to act for the client on.

As part of the scrutiny of the business relationship, you must satisfy yourself as to the source of funds for the transaction. The source of funds refers to the origin of the particular funds or other assets which are the subject of the business relationship with the client. It is not enough to know that the money is transferred from a particular bank account. Possible sources of funds include a PEP's current income, wealth, savings, or funds obtained from his current and previous positions, business undertakings, and family assets. You should establish whether the answers as to the source of funds are consistent with the quantum involved.

3.7 Situations where specific CDD measures are not required

CDD measures in relation to client

You need not ascertain and verify the identity of the client through the information listed at rule 6(2) of the Rules if the client is a Ministry or department of the Singapore Government, an organ of the Singapore State or a statutory board in Singapore; or a ministry or department of the government of a foreign country or territory (rule 6(3) of the Rules) unless you suspect that the client may be engaged in, or the business relationship with the client or the matter undertaken for the client may involve engagement in, money laundering or the financing of terrorism.

CDD measures in relation to entity or legal arrangement

You need not perform the CDD measures referred to in paragraphs (1), (2) and (3) of Rule 8 of the Rules if the client is (rule 8(4) of the Rules) –

(a) a Ministry or department of the Government, an organ of State or a statutory board;

(b) a ministry or department of the government of a foreign country or territory;

(c) an entity listed on the Singapore Exchange (Mainboard or Catalist) or a subsidiary of such an entity;

(d) an entity listed on a stock exchange outside Singapore that is subject to regulatory disclosure requirements;

(e) a relevant Singapore financial institution;
(f) a financial institution incorporated or established outside Singapore that is subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF;
(g) an investment vehicle every manager of which is a financial institution referred to in sub-paragraph (e) or (f);
(h) any of the following universities in Singapore:
  (i) Nanyang Technological University;
  (ii) National University of Singapore;
  (iii) Singapore Institute of Technology;
  (iv) Singapore Management University;
  (v) Singapore University of Technology and Design;
(i) a Government school as defined in section 2 of the Education Act (Cap 87);
(j) the Society; or
(k) an entity that is made up of regulated professionals who are subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF,

unless you suspect that the client may be engaged in, or the business relationship with the client or matter undertaken for the client may involve engagement in. money laundering or the financing of terrorism.

For entities listed on foreign stock exchanges (sub para (d) above), you will have to determine whether the exchange in question imposes disclosure requirements ensuring adequate transparency comparable to Singapore. In determining this, your practice will have to make its own assessment considering *inter alia* country risk, and the overall compliance with FATF requirements from published materials.

3.8 Existing clients

You need not repeatedly identify and verify the identity of a client or beneficial owner. You may rely on the identification and verification measures that have already been performed unless you have doubts about the veracity of the information obtained.

If it is an existing client, you must perform the CDD measures based on your assessment of the materiality and risks of money laundering and the financing of terrorism, taking into account –

(a) any previous CDD measures performed in relation to the client;
(b) the time when any CDD measures were last performed in relation to the client; and
(c) the adequacy of the data, documents or information obtained from any previous CDD measures performed in relation to the client (rule 14(1) of the Rules).

Generally, you may waive the full client identity checks if the client is an existing client who has been in contact with the law practice for the last five years.

You may consider waiving the full client identity checks for the following categories of existing clients:

(a) Existing clients who have been in contact with the law practice for the last five years and who provided some formal identification on first contact.
(b) Existing clients who have been in regular contact with the law practice for the last five years and who have not on those occasions provided formal identification on first contact.

For category (a) clients, you may waive ascertaining the identity and verifying identity of the client provided that there are no suspicions of money laundering and financing of terrorism, and you are satisfied that the original identification documents were adequate. A note confirming this must be signed by the proprietor or partner or director of the law practice and attached to the file.

For category (b) clients, you may waive ascertaining the identity and verifying identity of the client provided that there are no suspicions of money laundering and financing of terrorism, and you are satisfied that you know the client. A note confirming this must be signed by the proprietor or partner or director of the law practice and attached to the file. The note should include details of the length of time you have known the client and the nature of the referral to the law practice (for example, through a friend, business acquaintance or client).

3.9 Instructions from individual purporting to act on behalf of a client

If you receive instructions from an individual purporting to act on behalf of a client, you must perform the following CDD measures in relation to that individual (rule 7 of the Rules):

(a) verify whether the individual is authorised to act on behalf of the client; and
(b) ascertain and verify the identity of the individual.

To verify whether the individual is authorised, you may:

(a) confirm this with the client; and
(b) rely on any documents or information provided by that individual or the client.

To ascertain and verify the identity of the individual, you should consider the extent and nature of the documents (if any) or information required to ascertain and verify the identity of the individual. You may:

(a) obtain his/her business card;
(b) refer to his/her email address or email signature; and
(c) refer to the website of the client (if the client is an entity) for a profile of the individual.

If your client is an entity and you receive instructions from an individual, you need not perform the CDD measures in rule 7 of the Rules if you know the individual to be a member of the senior management or in-house counsel of the entity.

3.10 Performance of CDD measures by third parties

You may rely on a third party such as another law practice or bank (that is appropriately qualified – see below) to perform the CDD measures (apart from ongoing CDD on the business relationship with the client during the course of the business relationship) (rule 17 of the Rules). However, you remain ultimately responsible for the performance of those measures.

If you rely on a third party to perform any CDD measures, you must obtain from the third party all information required as part of those CDD measures.

Before you rely on a third party to perform any CDD measures, you must be satisfied that —

(a) where necessary, you will be able to obtain from the third party, upon request and without delay, all source documents, data or information required to verify the information required as part of the CDD measures; and
(b) the third party —
    (i) is subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF; and
    (ii) has measures in place for compliance with those requirements.

With regard to paragraph 3.10(b) above, you may refer to any publicly available reports or material on the quality of the prevention of money laundering and the financing of terrorism supervision in the jurisdiction where the third party operates and any publicly available reports or material on the quality of that third party's compliance with those requirements.

3.11 CDD measures for legal practitioners who act as trustees

If a legal practitioner acts as a trustee of an express trust:

(i) Governed by Singapore law;

(ii) That is administered in Singapore, namely where the control and management of the trust is exercised in Singapore; or

(iii) In respect of which any of its trustees is resident in Singapore, namely, a trustee who is an individual ordinarily resident in Singapore or a trustee which is incorporated, formed or established in Singapore.

You are subject to these CDD obligations in the Trustees Act and Trustees Act Regulations.

3.11.1 Identification and verification of the relevant parties

If the relevant party is an individual:
You must take reasonable steps to ensure that the following information is obtained from the relevant parties.

(a) Full name, including any aliases;

(b) Identity card number, birth certificate number, passport number, or other similar unique identification number issued by a government authority;

(c) Residential address;

(d) Date of birth; and

(e) Nationality.

You must also take reasonable steps to verify the relevant party's identity using objectively reliable and independent source documents, data or information to ensure that the information obtained and recorded is authentic. Examples of objectively reliable and independent source documents include the following original documents:

(a) identity cards;

(b) passports;

(c) birth certificates;

(d) driving licences; and

(e) work permits.

If the relevant party is unable to produce original documents, you may consider accepting documents that are certified to be true copies by other professionals (for example lawyers or notaries). If you are unable to meet the relevant party face to face, you may rely on a certified true copy of the identity document(s). You should take appropriate precautions to ensure that the relevant party's identity document(s) are adequately and independently certified. You should look out for obvious forgeries, but you are not required to be an expert in forged documents.

If the relevant party is an entity or legal arrangement:
If the relevant party is an entity or legal arrangement, you must take reasonable steps to ensure that the following information is obtained from the relevant parties: -

(a) Full name;

(b) Incorporation number or business registration number;

(c) Registered or business address;

(d) Its principal place of business (if different from the registered address);

(e) The date of constitution, incorporation or registration;
(f) The place of incorporation or registration; and
(g) The following information about every connected individual of the entity:
    (i) His or her full name, including any aliases;
    (ii) His or her identity card number, birth certificate number, passport number, or other similar unique identification number issued by a government authority.

You must also take reasonable steps to verify the relevant party's identity using objectively reliable and independent source documents, data or information to ensure that the information obtained and recorded is authentic. Examples of objectively reliable and independent source documents include the following original documents:
(a) The documents that prove the existence of the relevant party;
(b) The documents that regulate and bind the relevant party;
(c) The individuals in the senior management of the relevant party;
(d) The address of the registered office of the relevant party; and
(e) The address of the principal place of business of the relevant party, if the registered office of the client is not a principal place of business of the relevant party.

3.11.2 Identification and verification of effective controllers of relevant parties

If the effective controller is an individual:
You must take reasonable steps to ensure that the following information is obtained from the effective controllers of relevant parties: -
(a) Full name, including any aliases;
(b) Identity card number, birth certificate number, passport number, or other similar unique identification number issued by a government authority;
(c) Residential address;
(d) Date of birth; and
(e) Nationality

You must also take reasonable steps to verify the effective controller's identity using objectively reliable and independent source documents, data or information to ensure that the information obtained and recorded is authentic. Examples of objectively reliable and independent source documents include the following original documents:
(a) identity cards;
(b) passports;
(c) birth certificates;
(d) driving licences; and
(e) work permits.

If the effective controller is unable to produce original documents, you may consider accepting documents that are certified to be true copies by other professionals (for example lawyers or notaries). If you are unable to meet the effective controller face to face, you may rely on a certified true copy of the identity document(s). You should take appropriate precautions to ensure that the effective controller's identity document(s) are adequately and independently certified. You should look out for obvious forgeries, but you are not required to be experts in forged documents.

3.11.3 Identity of service suppliers

You must take reasonable steps to ensure that the following information is obtained from each person who is appointed or engaged as a service supplier to the relevant trust: -

(a) The name of the service supplier;
(b) The registered or business address of the service supplier;
(c) The contact details of the service supplier; and
(d) Where the service supplier is an entity, the name of the individual who is authorised to act for the service supplier.

3.11.4 Obligation to disclose to specified persons that trustees are acting for relevant trusts

When entering into a business relationship with a specified person, or enters a prescribed transaction with a specified person after 30 April 2017, you must take reasonable steps to inform the specified person at or before the business relationship is formed that you are acting for the relevant trust. This includes dealings with both local and foreign lawyers.

3.11.5 Obligation to keep accounting records

You must take reasonable steps to ensure that there are kept in respect of the relevant trust, accounting records including the following:

(a) Details of all sums of money received and expended by the relevant trust, and the matters in respect of which the receipt and expenditure takes place;
(b) Details of all sales, purchases and other transactions by the relevant trust;
(c) Details of the assets and liabilities of the relevant trust;
(d) Underlying documents (including but not limited to invoices and contracts); and
(e) Such notes as may be necessary to give a reasonable understanding of the details.

These details and documents must meet the following requirements:

(a) In the case of a trust that is a relevant trust on 30 April 2017 —
    (i) correctly explain all the transactions entered into by the relevant trust after 30 April 2017;
    (ii) enable the financial position of the relevant trust after 30 April 2017 to be determined with reasonable accuracy; and
    (iii) enable financial statements of the relevant trust in respect of any period after 30 April 2017 to be prepared;

In the case of a relevant trust created after 30 April 2017 —

(a) correctly explain all the transactions entered into by the relevant trust on or after it is created;
(b) enable the financial position of the relevant trust on or after it is created to be determined with reasonable accuracy; and
(c) enable financial statements of the relevant trust in respect of any period on or after it is created to be prepared; and

In the case of a trust that is not a relevant trust on 30 April 2017 but which becomes a relevant trust after 30 April 2017 —

(a) correctly explain all the transactions entered into by the relevant trust more than 30 days after it becomes a relevant trust;
(b) enable the financial position of the relevant trust more than 30 days after it becomes a relevant trust to be determined with reasonable accuracy; and
(c) enable financial statements of the relevant trust in respect of any period more than 30 days after it becomes a relevant trust to be prepared.

3.11.6 Timing of CDD measures for obtaining and verifying basic information about relevant trust parties, effective controllers and service suppliers

For the purposes of obtaining and verifying basic information about relevant trust parties, effective controllers and service suppliers, the reasonable steps must be taken within the time specified:

In the case of a trust that is a relevant trust on 30 April 2017 -

(a) On or before 30 May 2017; or

(b) In respect of any of the following relevant parties, effective controllers or service suppliers that are not known to the trustee on or before 30 May 2017 - as soon as reasonably practicable after the relevant parties, effective controllers and service suppliers are known to the trustee:
    (i) A beneficiary;
    (ii) A protector; and/or
    (iii) A person who has any power over the disposition of any property that is subject to the relevant trust;

In the case of a relevant trust created after 30 April 2017 -

(a) In respect of any of the following relevant parties, effective controllers or service suppliers - before the trustee exercises or performs any function, duty or power in respect of the relevant trust:
    (i) A settlor; and/or
    (ii) Another trustee; or

(b) In respect of any of the following relevant parties, effective controllers or service suppliers - as soon as reasonably practicable after the relevant parties, effective controllers or service suppliers is known to the trustee:
    (i) A beneficiary;
    (ii) A protector; and/or
    (iii) A person who has any power over the disposition of any property that is subject to the relevant trust; and

In the case of a trust that is not a relevant trust on 30 April 2017 but which becomes a relevant trust after 30 April 2017 -

(a) Within 60 days after the date on which the trust becomes a relevant trust; or

(b) In respect of any of the following relevant parties, effective controllers or service suppliers that is not known to the trustee within the time specified in sub-paragraph (a) - as soon as reasonably practicable after the relevant parties, effective controllers or service suppliers are known to the trustee:
    (i) A beneficiary;
    (ii) A protector; and/or
    (iii) A person who has any power over the disposition of any property that is subject to the relevant trust.

3.11.7 Obligation to maintain and update obtained information

As an additional safeguard, you are expected to: -

(a) Obtain and maintain adequate, accurate and current information on the identities of the settlor, each trustee, the protector (if any) and each beneficiary or class of beneficiaries of the trust, relevant parties and effective controllers;

(b) Obtain and maintain basic information on every other service supplier;

(c) Maintain the above information for at least 5 years after the legal practitioner's involvement with the trust ceases; and

(d) Ensure that the information is kept accurate and as up-to-date as possible, and is updated on a timely basis.

3.12 Timing of CDD

The following CDD measures must be performed before the start, or during the course of establishing a business relationship with the client:

(a) ascertaining the identity of the client (rule 6(1)(*a*) of the Rules);
(b) where the client is an entity or legal arrangement, ascertaining the client's identity through specific information (rule 6(2) of the Rules); and
(c) ascertaining whether the client has any beneficial owner (rule 8(1)(*a*) of the Rules).

The following CDD measures need not be completed before the start, or during the course, of establishing a business relationship with the client provided that a deferral of the completion of the measures is necessary in order not to interrupt the normal conduct of business operations and the risks of money laundering and the financing of terrorism can be effectively managed (rule 11(2) of the Rules):

(a) Verifying the client's identity using objectively reliable and independent source documents, data or information (rule 6(1)(*b*) of the Rules).
(b) Where the client is an entity or legal arrangement, verifying the client's identity through specific information (rule 6(2) of the Rules).
(c) Taking reasonable measures to determine whether the client is a politically – exposed individual, or a family member or close associate of any such individual (rule 6(1)(*c*) of the Rules).
(d) Verifying whether an individual purporting to act on behalf of a client is authorised, and ascertaining and verifying the identity of the individual (rule 7 of the Rules).
(e) Ascertaining the identity of each beneficial owner (if any) (rule 8(1)(*b*) of the Rules).
(f) Taking reasonable measures to verify the identity of each beneficial owner (if any) using objectively reliable and independent source documents, data or information (rule 8(1)(*c*) of the Rules).
(g) Taking reasonable measures to determine whether each beneficial owner (if any) is a politically-exposed individual, or a family member or close associate of any such individual (rule 8(1)(*d*) of the Rules).
(h) Understanding the nature of the client's business (rule 8(1)(*e*) of the Rules).
(i) Understanding the ownership and control structure of the client (rule 8(1)(*f*) of the Rules).
(j) Identifying and taking reasonable measures to verify the identity of, each beneficial owner of the client, where the client is an entity (rule 8(2) of the Rules).
(k) Identifying and taking reasonable measures to verify the identity of, each beneficial owner of the client, where the client is a legal arrangement (rule 8(3) of the Rules).
(l) Identifying and if appropriate, obtaining information on the purpose and intended nature of the business relationship with the client (rule 9(2) of the Rules).
(m) A legal practitioner who is a trustee of an express trust governed by Singapore law, obtaining and maintaining adequate, accurate and current information on the identities of the settlor, each trustee, the protector (if any) and each beneficiary or class of beneficiaries of the trust, and of any other individual exercising effective control over the trust (rule 10(2) of the Rules).
(n) A legal practitioner who is a trustee of any trust governed by Singapore law, obtaining and maintaining basic information on every other regulated agent of, or service provider to, the trust, including any investment adviser or manager, accountant or tax adviser (rule 10(3) of the Rules).

If the completion of the measures is deferred, the law practice must adopt internal risk management policies and procedures under which a business relationship may be established before the completion of the relevant CDD measures; and you must complete the relevant client due diligence measures as soon as is reasonably practicable (rules 11(3) and 11(4) of the Rules).

3.13 Ongoing CDD on business relationship

Your CDD obligations do not end after the onboarding of the client. You are obliged to continue to monitor both the client and the transaction for the duration of your retainer (rule 9(3) of the Rules). In the context of the legal profession, ongoing monitoring does not mean regular and repeated screening of clients. This is because most of our engagements will be for a short duration. The most important aspect of ongoing monitoring is for you to scrutinise transactions undertaken throughout the course of the engagement, to ensure that those transactions are consistent with your knowledge of the client, the client's business, the client's risk profile and, where appropriate, the source of funds for those transactions. FATF records show that half of all STRs lodged by lawyers were after the initial onboarding of the client.

Of course, for longer engagements (such as retainer arrangements) you need to ensure that the CDD data, documents and information obtained in respect of the client, each individual appointed to act on behalf of the client, and each beneficial owner of the client, are relevant and kept up-to-date. Accordingly, appropriate cases you must conduct regular reviews of existing client due diligence data, documents and information. You should determine your own schedule appropriate to your circumstances for this refreshing of you CDD data. An example will be:

- In case of Enhanced CDD – every 3 months
- In cases where the risk of money laundering is elevated – every year; and
- In other cases - every 2 years.

The degree and nature of the ongoing monitoring should be appropriate to the level of the ML/TF risks.

You should be alert to changes in instructions that substantially alter the nature of your engagement. For example, where you are instructed in the acquisition of a business, but when the acquisition is abandoned, you are instructed to transfer the purchase monies that you were holding to a different source.

Ongoing CDD does not require you to do the following:

(a) suspend or terminate a business relationship until you have updated CDD data, documents and information so long as you are satisfied that you know who your client is;
(b) perform the whole CDD process again every few years; and
(c) conduct random checks of files.

If you have reasonable grounds, based on the ongoing CDD, or otherwise, for suspecting that the business relationship with the client involves engagement in money laundering or the financing of terrorism, you should as appropriate:

(a) file a Suspicious Transaction Reporting Officer, if the client may be engaged in money laundering; and/or
(b) lodge a report with a police officer or Commercial Affairs Officer, if the client may be engaged in financing of terrorism.

In such a circumstance, you should also consider whether you should carry on with the engagement or retain the client (rule 9.3(c) of the Rules). One factor you should consider is that you or your practice may be at risk of a civil claim by the victims of any crime as a constructive trustee.

If you decide to retain the client, you must substantiate the reasons for doing so and document those reasons; and the business relationship must be subjected to commensurate risk mitigation measures, including enhanced ongoing monitoring. Possible reasonable reasons for continuing to act include situations where:

(a) ceasing to act may risk tipping off the suspect;
(b) the suspicion of money laundering is not on the part of your client but by some other party, and by ceasing to act you may jeopardise your innocent client's rights
(c) your engagement is not transactional and your continuing to act will not affect the ML/TF.

An illustration of the failure of ongoing monitoring is the case of PP v Kang Bee Leng [DAC 940645/2017]. The practitioner was instructed to act for a Chinese national in the acquisition of a property. The practitioner received funds from the client, *inter alia*, for the purposes of paying stamp duty. Subsequent to the engagement, the practitioner discovered that the client had been arrested for financial crimes in China. The practitioner suspected the monies passed to her represented the proceeds of those crimes, but did not make an STR. The practitioner was prosecuted and convicted for failing to make an STR.

3.14 Enhanced CDD measures

Enhanced CDD is an increased level of CDD for those clients that are considered to present a higher risk, but who do not arouse the level of suspicion to warrant filing an STR. This may be because of client's identity, status as a PEP, business activity, or association with a high risk territory.

Enhanced CDD is mandatory in the following situations (rule 13(1) of the Rules):

Country Risk

(i) If the client is from or in, or the transaction relates to, any country or jurisdiction in relation to which the FATF has called for countermeasures or enhanced client due diligence measures (the "FATF list"). These countries will be notified to legal practitioners and law practices by the Law Society on its website which should be regularly checked.

(ii) If the client is from or in any country or jurisdiction known to have inadequate measures to prevent money laundering and the financing of terrorism, as determined by the legal practitioner or law practice.

For the purposes of (ii), there is no universally agreed list of high risk countries or established criteria or determining the same. This country risk may arise in a variety of circumstances, including from the domicile of the client, the location of the transaction, or source of wealth/ funds.

However, it may be useful to consider these lists:

- FATF's website link of high-risk and non-cooperative countries http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/
- BASEL AML Index: https://www.baselgovernance.org/basel-aml-index
- Corruption Perception Index by Transparency International: https://www.transparency.org/en/cpi#

Lists relevant to terrorist financing include:

- The List established and maintained by the Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh) Al-Qaida and associated individuals groups undertakings and entities: https://www.un.org/securitycouncil/sanctions/1267

- The List established and maintained by the Committee established pursuant to resolution 1988 (2011) with respect to individuals, entities, groups, or undertakings https://undocs.org/S/RES/1988(2011)

- MAS' website on targeted financial sanctions: https://www.mas.gov.sg/regulation/anti-money-laundering/targeted-financial-sanctions/lists-of-designated-individuals-and-entities

All practices should subscribe to the MAS website to receive updates on the designations for terrorism.

More information on FT risks may be obtained from the Inter-Ministry Committee on Terrorist Designation's ('IMC-TD') website. IMC-TD was formed in 2012 to act as Singapore's authority relating to the designation of terrorists.

For risk countries in the context of tax crimes, you can refer to:

Global Forum on Transparency and Exchange of Information for Tax Purposes

Financial Secrecy Index by Tax Justice Network

In referencing a list, you should also bear in mind the circumstances. For example, if you are concerned about tax evasion, reference to a terrorism list is unlikely to be helpful.

The URLs above may change from time to time.

Law Society's AML portal provides links to all the above https://www.lawsociety.org.sg/for-lawyers/aml/

Politically Exposed Persons ("PEP")

(a) Where the client, or the beneficial owner of the client (being an entity or legal arrangement), is a foreign PEP or a family member or close associate of a PEP (rule 13(1)(b) of the Rules)

(b) Where the client or the beneficial owner of the client (being an entity or a legal arrangement) is a domestic PEP, or an individual entrusted with a prominent function in an international organisation, or a family member or close associate of any such individual AND you have assessed the business relationship with the client to be a higher risk business relationship, and (rule 13(1)(c) of the Rules)

The business relationship, based on information (on the purpose and intended nature of the business relationship) you have obtained, should be commensurate with what one could reasonably expect from the client, given his/her particular circumstances. Where the level or type of activity in the business relationship diverges from what can be reasonably explained, the business relationship may be a higher risk business relationship (see paragraph 3.5).

When the risk assessment establishes that the business relationship with a domestic PEP /individual entrusted with a prominent function in an international organisation (or a family

member or close associate) does not present a higher risk, the individual in question can be treated like any other normal client.
You should familiarise yourself with the definition of PEP in the Glossary. Those who want to understand more about PEPs in the context of AML can refer to the FATF Guidance on Politically Exposed Persons, the link for which is available at the Law Society's AML Portal.

Enhanced CDD measures
When you conduct Enhanced CDD (or ECDD), you should do the following (rule 13(2) of the Rules):

(i) obtain the approval of your senior management before —
    (A) in the case of a new client, establishing a business relationship with the client; or
    (B) in the case of an existing client, continuing a business relationship with the client;
(ii) take reasonable measures to establish the source of wealth, and the source of funds, of the client and, if the client is an entity or a legal arrangement, of the beneficial owner of the client;

(iii) conduct enhanced ongoing monitoring of the business relationship with the client (see section 3.13 above).

Senior management
What constitutes senior management will depend on the size, structure, and nature of the law practice and it is for the law practice to determine their senior management. Senior management may be:

(i) the head of a practice group;
(ii) the partner or director supervising the file;
(iii) another partner or director who is not involved with the particular file; or
(iv) the managing partner or director.

If enhanced CDD measures have to be performed by the foreign branch or foreign subsidiary of a Singapore law practice (see paragraph 2.1.2), and senior management approval is required, the Singapore law practice may determine whether the approval should be given by the senior management of that foreign branch or subsidiary.

Source of wealth and source of funds
The source of wealth refers to the origin of the client's entire body of wealth (that is, total assets). The source of funds refers to the origin of the particular funds or other assets which are the subject of the business relationship with the client. Possible sources of wealth or funds include a PEP's current income, wealth or funds obtained from his current and previous positions, business undertakings, and family assets. It may be possible to gather general information on the source of wealth or funds from publicly disclosed assets, any other publicly available sources, from commercial databases or other open sources. An internet search (including of social media) may also reveal useful information about the client's wealth and lifestyle and about their official income. You may also rely on self-declarations of the client. If you rely on the client's declaration of the source of wealth or funds, any inability to verify the information should be taken into account in establishing its reliability. Discrepancies between client declarations and reliable information from other sources may be suspicious if such discrepancies cannot be satisfactorily explained.

Enhanced ongoing monitoring

What constitutes enhanced ongoing monitoring of the business relationship, will depend on the circumstances. Possibilities include:

- increasing the number and timing of controls applied,
- selecting transactions that need further examination.
- senior management taking on responsibility for monitoring the matter rather than delegating it to a junior.

3.15 Inability to complete CDD measures

If you are unable to complete any CDD measures, you (rule 15 of the Rules) –

(a) must not commence any new business relationship, and must terminate any existing business relationship, with the client;

(b) must not undertake any transaction for the client; and

(c) must consider whether to file a suspicious transaction report in relation to the client.

You are unable to complete the CDD measures if you:

(a) are unable to obtain or to verify any information required as part of those CDD measures; or

(b) do not receive a satisfactory response to any inquiry in relation to any information required as part of those CDD measures.

If you have started work for a client in relation to a transaction but completion of CDD was deferred in accordance with rule 11 of the Rules, you must not commence any new business relationship and must terminate any existing business relationship, if you are unable to complete the CDD measures. If you are unable to complete any ongoing CDD or enhanced CDD, you must terminate any existing business relationship with the client.

3.16 Where there are grounds to suspect money laundering or financing of terrorism

If you have reasonable grounds to suspect that a client may be engaged in money laundering or the financing of terrorism, you (rule 5 of the Rules):

(a) must not establish any new business relationship with, or undertake any new matter for the client; and

(b) must file a suspicious transaction report with either or both of the following –

(i) a Suspicious Transaction Reporting Officer, if the client may be engaged in money laundering;

(ii) a police officer or Commercial Affairs Officer, if the client may be engaged in the financing of terrorism.

If you suspect that a client may be engaged in money laundering or the financing of terrorism and have reasonable grounds to believe that the performance of any CDD will tip-off the client, you need not perform those CDD measures but must instead file a suspicious transaction report with either or both of the following (rule 16 of the Rules) –

(a) a Suspicious Transaction Reporting Officer, if the client may be engaged in money laundering;

(b) a police officer or Commercial Affairs Officer, if the client may be engaged in the financing of terrorism.

Part 4 – Suspicious Transaction Report

4.1 Duty to disclose under the CDSA

In accordance with section 70D in Part VA, where a legal practitioner or law practice knows or has reasonable grounds to suspect any matter referred to in section 39(1) of the CDSA, the legal practitioner or law practice must disclose the matter to a Suspicious Transaction Reporting Office ("STRO") under the CDSA by way of a suspicious transaction report ("STR").

The CDSA requires a suspicious transaction report to be made as soon as is reasonably practicable. The failure to make a suspicious transaction report is an offence punishable with up to $250,000 or imprisonment of up to 3 years or both.

If a suspicious transaction report is made in good faith, the disclosure will not be a breach of any restriction upon the disclosure imposed by law, contract or the rules of professional conduct (sections 39(6) and (8) CDSA).
In proceedings under the CDSA against a person for an offence (under section 43 or section 44 of the CDSA), he will be deemed not to have knowledge of the matters referred to in the STR (section 40 CDSA).

STRs must be lodged with the STRO via their online reporting system SONAR at https://www.police.gov.sg/SONAR. This requires registering for an account. All practices should so register so that when necessary, they can make their STR without delay.

4.2 Duty to disclose under the TSOFA

There is a duty under section 8(1) of the TSOFA for every person in Singapore and every citizen of Singapore outside Singapore who has (*inter alia*) information about any transaction or proposed transaction in respect of any property belonging to any terrorist or terrorist entity, to file a suspicious transaction report. Failure to do so is an offence. The report can be made through SONAR.

4.3 Not to prejudice investigation

If you know or have reasonable grounds to suspect that a suspicious transaction report has been made; it would be an offence (section 48 of the CDSA and section 10B of the TSOFA) to disclose to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

4.4 Legal professional privilege

Advocates and solicitors
Singapore lawyers have a specific defence under s39(4) CDSA from making disclosure of information that is protected by legal professional privilege as defined in s2A CDSA. This definition of legal professional privilege closely follows the common law and in broad terms covers:

- communications between lawyer and client in connection with the giving of legal advice;
- communications between lawyer and client in connection with and for the purposes of any legal proceedings.

However, any communication, item or document that is made, prepared or held with the intention of furthering a criminal purpose is not covered by privilege. Although there are no reported Singapore decisions on the threshold for this illegality, this issue was recently

considered by the English High Court in the case *Addlesee v Dentons Europe LLP*. The judge ruled that the evidential threshold was a "strong prima facie case" - being lower than "a balance of probabilities" or the threshold for summary judgment, "that the defendant had no real prospect of success".

Since money laundering itself is illegal, in practice it is very likely that there will be very few instances where the practitioner will be able to rely on the privilege. In practice it is likely only to be in the following circumstances:

- when being consulted by a client on whether the client should lodge an STR; and
- when being instructed by a client after the transaction has been completed, e.g. when the client is being investigated or prosecuted in relation to the subject transaction.

Practitioners should also bear in mind that the following information is not protected by privilege:

- identity and address of client (JSC BTA Bank v Syram, Clyde & Co [2011] EWHC 2163)
- Work product e.g. company formation documents (Time Super v ICAC [2002] HKCFI 707) conveyancing documents (ex P Baines & Baines [1988] QB 579), contracts and declarations of trust (DPP v Holman & Fenwick unreported 13 Dec 1993)

Foreign practitioners

Owing to the restrictive drafting of s39(4) and s2A CDSA, foreign practitioners in Singapore are not able to rely on these provisions as a defence. However, Singapore law generally recognises that foreign lawyers can rely on legal professional privilege under the common law to the same extent that Singapore lawyers can. Accordingly, the comments above on the scope and nature of legal professional privilege will apply equally to them. To the extent that they need to rely on a statutory foundation, the foreign practitioner will have to rely on the defence under s39(5) CDSA; that they had a reasonable excuse for not disclosing the information in question. If they are relying on a privilege that is coextensive with s2A, it is very likely that a court will find that it is a "reasonable excuse".

However foreign practitioners who wish to claim a wider privilege that they enjoy in their home jurisdiction may find that this will not be accepted as a reasonable excuse by a Singapore court. This is not an issue that has ever been addressed by the courts in Singapore and will almost certainly depend on the specifics of the situation.

Part 5 - Keeping of Records

5.1 General comments

In accordance with section 70E in Part VA, a legal practitioner and law practice are required to maintain all documents and records relating to each relevant matter, and all documents and records obtained through CDD measures.

Rule 19 of the Rules requires keeping of records in respect of the relevant matter, that is, the business relationship itself, not the materials obtained through CDD measures. Rule 20 of the Rules, on the other hand, refers to keeping of records of the CDD materials and supporting evidence.

A law practice has the discretion to keep the records:

(a) by way of original documents;
(b) by way of photocopies of original documents; or
(c) in computerised or electronic form including a scanned form.

5.2 Documents and records in relation to a relevant matter

You must maintain a document or record relating to a relevant matter for at least five years after the completion of the relevant matter (rule 19 of the Rules). It would suffice for one set of documents or records to be maintained between the legal practitioner and the law practice.
The obligations to continue maintaining the documents and records may change in the circumstances as described in rule 19 of the Rules.

5.3 Document and records in relation to CDD measures

You must maintain a document or record obtained through CDD measures for at least five years after termination of the business relationship with the client, or after the date of a transaction (which is in relation to an occasional transaction). An occasional transaction refers to a transaction carried out in a single transaction or several operations which appear to be linked.
It would suffice for one set of documents or records to be maintained between the legal practitioner and the law practice.

Examples of records to be kept, include the following:

(a) A copy each of the information and evidence of the client's, beneficiary owner's (if any) identity, and identity of individual purporting to act on behalf of a client. These include:
  (i) copies of all documents used in establishing and verifying the client's, beneficial owner's and the individual's (purporting to act on behalf of a client) identity; and
  (ii) the individual's authority to act on behalf of a client.

(b) Information on the purpose and intended nature of the business relationship.

(c) Written records that CDD measures are performed by a third party and the basis for relying on a third party to perform CDD.

(d) Written records of the analysis of the risks of money laundering and the financing of terrorism.

(e) Written records of the basis for determining that a client falls into the categories for which an inquiry into the existence of beneficial owner is not required.

(f) Written records of the reasons for retaining a client where there are reasonable grounds for suspecting that the business relationship with the client involves engagement in money laundering or the financing of terrorism.

(g) Written records of ongoing CDD measures.

(h) The legal practitioner or law practice's assessment where it performs enhanced CDD measures and the nature of the enhanced CDD measures.

(i) Written records of a determination whether to file a suspicious transaction report.

5.4 Application

By referencing the completion of the relevant matter and the termination of the business relationship respectively, rules 19 and 20 of the Rules make clear the records obtained through CDD may need to be kept longer than the records obtained on the relevant transaction itself. In other words, records of a particular transaction, either as an occasional transaction or within the business relationship, must be kept for five years after the date the transaction is completed. All other documents obtained through CDD must be kept for five years after the termination of the business relationship with the client.

The requirement on a legal practitioner to maintain records and documents is on the legal practitioner who acted on the matter. It is possible that more than one legal practitioner was involved in the matter. However, not all the legal practitioners may have acted in preparing for or carrying out any transaction concerning a relevant matter. The obligations to perform CDD

measures and to keep records would apply only to the legal practitioner(s) who acted in preparing for or carrying out any transaction concerning a relevant matter.
In the situation of a law practice dissolving or the license being revoked, and the legal practitioner ceasing to practise (rules 19(3)(*b*) and 20(3)(*b*) of the Rules), the proprietor or partner or director responsible for the file (subject to any agreement or understanding with the other legal practitioners (if any)), should continue to maintain the document or record.

5.5 Sufficiency of document and records

You must take reasonable steps to ensure that the documents and records kept in relation to a relevant matter are sufficient to substantially permit a reconstruction of the relevant matter and if required, to provide evidence for the prosecution of an offence relating to the relevant matter (rule 21 of the Rules).

Rule 21 of the Rules does not impose any additional obligations on legal practitioners or law practices over and above those set out in rules 19 and 20 of the Rules.

5.6 Documents and records to be made available to Council of the Law Society

Council may pursuant to section 70F of Part VA and rule 26 inspect practices in order to ascertain whether Part VA and the Rules are being complied with. Pursuant to this, the Law Society regularly inspects practices.

You must cooperate with these inspections and ensure that any documents and records required by the Council for purposes of an inspection are produced to the Council or to any person appointed by the Council (rule 22 of the Rules).

Part 6 – New Technologies, Services and Business Practices

6.1 General comments

You must identify and assess the risks of money laundering and the financing of terrorism that may arise in relation to (rule 23 of the Rules) —

(a) the development of any new service or new business practice (including any new delivery mechanism for any new or existing service); and
(b) the use of any new or developing technology for any new or existing service.

Before offering any new service or starting any new business practice, or using any new or developing technology, you must:

(a) undertake an assessment of the risks of money laundering and the financing of terrorism that may arise in relation to the offering of that service, the starting of that business practice or the use of that technology; and
(b) take appropriate measures to manage and mitigate those risks.

6.2 Virtual assets

One emerging area is in relation to virtual assets. If you act for clients in the virtual assets industry, you must assess the attendant risks of ML and TF.

In particular, FATF has noted that the virtual asset ecosystem has seen the rise of anonymity-enhanced cryptocurrencies (AECs), mixers and tumblers, decentralised platforms and exchanges, and other types of products and services that enable or allow for reduced transparency and increased obfuscation of financial flows. There are many documented cases of criminal and terrorist groups using virtual assets and you must be alert to the risk.

There has also been the emergence of other virtual asset business models or activities such as initial coin offerings, that present fraud and market manipulation risks. There have been many fraudulent ICOs. There are also new illicit financing typologies that continue to emerge, including the increasing use of virtual-to-virtual layering schemes that attempt to further obfuscate transactions in a comparatively easy, cheap and secure manner.

Legal practitioners and law practices may act for virtual asset clients in different capacities, including but not limited to assisting by providing escrow or trust services, legal opinions on the legitimacy of offerings and services, regulatory applications and advice, transactional support, corporate setup, and legal consulting services. They may also be advising exchanges and wallet providers in relation to their money laundering and terrorism financing policies and procedures, suspicious transaction reporting, and regulatory reporting requirements.

When acting for clients in the virtual assets industry, you should apply a risk-based approach when considering whether to establish or continue relationships with clients, evaluate the money laundering and financing of terrorism risks of the business relationship, and assess whether these risks can be appropriately mitigated and managed. You should also satisfy yourself that you have a sufficient understanding of the transactions that you are advising on so that you have a basis to make your assessment.

Depending on the scope and nature of work carried out for the client, you may also need to consider whether your firm needs to employ enhanced due diligence tools specific for the virtual assets industry to screen the client and his source of funds during the client onboarding process.

However, it is important that the risk-based approach should be applied properly, and clients are not excluded within the sector without a proper risk assessment.

The following indicators may raise red flags warranting ECDD:

- the initial coin offering issuer requests for funds to be distributed immediately after token distribution but before the completion of the said project, or requests that the law practice distributes funds in a manner that deviates from the outlined structure in the white paper;

- the client requests for tax advice or corporate setup advice in other jurisdictions to assist with the evasion of taxes, transfers of funds or to evade regulations;

- the founders or advisers of the initial coin offering have been linked to failed offerings or scams in the market, or there are falsehoods involved in their profiles or white paper claims;

- the client requests for payment to be made from a third-party payer which does not seem to be clearly linked to the project or client; and/or

- the source of funds or virtual assets cannot be clearly established.

- Real world identity of the source of the virtual asset cannot be established.

- You appear to be interposed into a virtual asset transaction without any good commercial reason but rather to lend an appearance of legitimacy to a transaction.

You should ensure that you have sufficient technical expertise to evaluate your client's marketing claims so that you are able to properly assess the money laundering and terrorist financing risks of your client's business model and projects.

If you accept virtual assets as payment for legal services, sufficient information should be requested to verify the source of funds for payment. You should also consider whether enhanced due diligence tools would be required to help screen the source wallet address. You should assess the risks of using any virtual currency payment processors to convert virtual assets to fiat currencies.

FATF have produced a Guidance For a Risk-Based Approach To Virtual Currencies which is available from the Law Society's AML Portal.

Part 7 – Creation, Operation or Management of a Company

7.1 General

This includes:

a. Acting or arranging for another person to act as a director, secretary of a corporation or its equivalent in other legal entities;
b. Acting or arranging for another person to act as a partner in a partnership or its equivalent in other entities;
c. Providing a registered office, business or correspondence address, or other related services for a corporation, partnership or other legal entity; and/or
d. Acting or arranging for another person to act as a shareholder on behalf of any corporation.

If you are performing these functions in respect of a Singapore company, your practice will be a registered filing agent or RFA licensed by ACRA and will have to comply with the AML/TF requirements in Part 2 of the First Schedule of the ACRA Regulations.

These include, but are not limited to the following:

- Conducting due diligence on customers (including ascertaining beneficial ownership);
- Developing internal policies, procedures and controls to prevent activities related to money laundering and financing of terrorism; and
- Assessing risks and applying a risk-based approach.

For more information, please refer to the ACRA Regulations and the ACRA AML Guidelines on the CDD measures applicable for RFAs. A copy of the ACRA AML Guidelines can be accessed here: https://www.acra.gov.sg/docs/default-source/default-document-library/corporate-service-providers/rfaguidelines_v2-3(12nov).pdf

7.2 Formation of corporations and other legal entities on behalf of customers

In assessing the risks of forming a corporation or other legal entity on behalf of a customer, you should take into account factors such as: (i) the type of customer (taking into account the risk factors that are described in this Practice Direction); (ii) the type of transaction that the customer expects you to perform; (iii) the purpose the company is being formed; (iv) the geographical area of the operation of the customer's business; and (v) the business relationships and transactions with persons from high risk jurisdictions.

You must be particularly careful when you are being required to provide nominee services (e.g. as a director or shareholder) or act as bank signatory.

7.3 Acting as an Intermediary

Rather than undertaking the actual incorporation, you may be instructed as an intermediary to procure an offshore corporation or other entity for the client- for example, acquiring a shelf company from a service provider. This is particularly prevalent in the context of acquiring offshore companies from jurisdictions such as the British Virgin Islands. Such an engagement will also constitute a relevant matter requiring you to conduct CDD on the client, and the directors and shareholders of the offshore entity.

Other Information

If you wish to read further guidance in connection with the Rules, please refer to the Law Society's website (https://www.lawsociety.org.sg/for-lawyers/aml/).

There are other materials available which may be useful. This is primarily as a result of the Rules closely following the FATF Recommendations which set out a comprehensive framework of international standards. As a FATF member, Singapore is obliged to implement the FATF Recommendations, which have been adopted by many countries around the world. In understanding and implementing your obligations under Part VA, the Rules and this Practice Direction, we would draw your attention to the following additional materials issued by FATF (which may be updated from time to time):

1. The FATF Risk-Based Approach Guidance for Legal Professionals, June 2019

2. FATF - Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals, June 2013

3. FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22), June 2013

4. FATF Guidance On The Risk Based Approach to Combating Money Laundering and Terrorist Financing-high level principles and procedures

5. FATF Guidance Transparency and Beneficial Ownership

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.1

[Formerly PDR 2013, paras 78 and 79A; PDR 1989, chap 7, para 3(b)]

DRAWING MONEY FOR LEGAL COSTS FROM CLIENT ACCOUNT

While all practising solicitors (as defined by the subsidiary legislation) should be familiar with (*inter alia*) the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR'), the Council of the Law Society had previously noted with concern the increasing frequency of complaints from the lay client of moneys from the client account being applied towards payment of the solicitor's costs without the knowledge or consent of the client.

Members' attention is drawn to rule 7(1)(*a*)(iv) of the SAR:

> "[There may be drawn from a client account … in the case of client's money …] money properly required for or towards payment of the solicitor's costs where a bill of costs or written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for [him/her] will be applied towards or in satisfaction of such costs[.]"

Before a solicitor can deduct money from a client account in satisfaction of his/her costs, he/she must have:

(a) delivered to the client a bill of costs or other form of written intimation of the amount of costs incurred;

(b) notified the client that such an amount will be deducted in satisfaction of his/her costs; and

(c) allowed a lapse of two working days after giving the notification referred to paragraph (a) above, before transferring such amount for costs out of the client account.

Signatories to cheques drawn on client account should be persons meeting the requisite requirements under rule 8(7) of the SAR. Where a second signatory is required, he/she must follow the requirements prescribed in Council's Practice Direction on "Responsibilities and Duties of a Second Signatory under the Legal Profession (Solicitors' Accounts) Rules (Practice Direction 3.3.10).

Failure to follow the process set out above could render a solicitor to be in breach of the SAR and thereby guilty of professional misconduct.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.2

[Formerly PDR 2013, para 107; Council's Practice Direction 1 of 2011]

ENGAGEMENT OF A BOOK-KEEPER UNDER THE LEGAL PROFESSION (SOLICITORS' ACCOUNTS) RULES

This Practice Direction shall apply to all law practices that wish to engage a book-keeper. The book-keeper may be an accounting firm, an accounting corporation, an accounting LLP, a firm or body corporate providing book-keeping services or an individual pursuant to rule 11A of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR'). In addition, member's attention is drawn to the guidelines in relation to engagement of book-keepers as set out in the Law Society's "Guide to Solicitors' Accounts".

A sole proprietor, managing partner or director of any such law practice must apply annually in writing to the Council of the Law Society for approval to engage a book-keeper. The application must be accompanied by the relevant statutory declaration. See Parts C and E of this Practice Direction. The relevant forms (attached at the end of this Practice Direction) can be downloaded at *http://www.lawsociety.org.sg/For-Lawyers/Running-Your-Practice/Forms*:

(a) Application for Book-Keeper's Form 1 - Individual ('BK Form 1')
(b) Statutory Declaration 1 - Individual ('SD 1')
(c) Application for Book-Keeper's Form 2 - Entity ('BK Form 2')
(d) Statutory Declaration 2 - Entity ('SD 2')

Upon written approval by Council, the law practice may engage the approved book-keeper to keep the cash books, ledgers and journals and such other books and accounts required by rule 11 of the SAR ('Books and Accounts') properly written up and reconciled in accordance with rule 11 of the SAR.

A. Criteria for a Book-keeper Who is an Individual or a Person ('Relevant Person') Who Provides Book-keeping Services to a Law Practice on Behalf of a Firm or Body Corporate (Other Than an Accounting Firm or Accounting Corporation or Accounting LLP)

Such a book-keeper or relevant person must satisfy the following criteria:

(a) possess relevant qualifications as defined in Part B (below);

(b) be independent, that is, not an employee, parent, spouse, sibling, adopted child, step child or child of the solicitor;

(c) he/she, or in the case of a relevant person, the proprietor, managing partner or managing director of his/her firm or body corporate must submit the required statutory declaration to Council on an annual basis and whenever there is a change of book-keeper by the law Practice during that accounting period; and

(d) if he/she has not completed the mandatory book-keeping course as prescribed by Council, he/she must undertake to complete the said course within 12 months of being so appointed.

B. Qualifications of a Book-keeper who is an Individual and of a Relevant Person

A book-keeper is required to have at least one of the following approved qualifications:

(i) London Chamber of Commerce and Industry;
(ii) Association of Accounting Technicians;
(iii) Certified Accounting Technician;
(iv) a diploma in accounts from a polytechnic;
(v) passed ACCA level 2; or
(vi) a Degree in Accountancy.

For those possessing only the qualifications set out in (i), (ii) and (iii) above, the book-keeper or relevant person must also have at least one year's experience in writing up the Books and Accounts for a law practice.

For a book-keeper or relevant person who does not possess any of the qualifications described above, the book-keeper or relevant person must have at least five years' experience in writing up the Books and Accounts for a law practice.

C. Contents of the Statutory Declaration

A law practice that engages an individual or an accounting sole proprietorship or any other sole proprietorship providing book-keeping services to write up the Books and Accounts must submit, two weeks prior to the engagement, a statutory declaration exhibiting a certified true copy of the educational certificates and Accounting and Corporate Regulatory Authority search of the business/company providing book-keeping services to Council in the form ('SD 1') attached with this Practice Direction.

D. Book-keeping by an Accounting Firm, Accounting Corporation or Accounting LLP

An "accounting firm", "accounting corporation" or "accounting LLP" is defined in the Accountants Act (Cap 2, 2005 Rev Ed).

E. Contents of the Statutory Declaration

A law practice that engages an accounting firm, accounting corporation, accounting LLP, or any other firm or body corporate providing book-keeping services to write up the Books and Accounts must submit two weeks prior to that engagement a statutory declaration to Council in the form ('SD 2') attached with this Practice Direction.

Practice Direction 2 of 2007 has been superseded by Practice Direction (PDR 2013, para 107) with effect from 1 January 2012.

For a period of five months beginning 1 August 2011 until 31 December 2011, the SAR and Practice Direction 2 of 2007 shall continue to apply to any law practice holding conveyancing money or anticipatory conveyancing money that was deposited into the law practice's client account before 1 August 2011.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

To : The Council
The Law Society of Singapore
39 South Bridge Road
Singapore 058673

BK FORM 1

Year of Application: 20 _____

APPLICATION FOR APPROVAL OF A BOOK-KEEPER TO BE ENGAGED BY A LAW PRACTICE

(Where Proposed Book-Keeper is an Individual/Sole Proprietor)

A. Law Practice's Particulars

Name of Proprietor/Managing Partner/Director: _____

Admission No: _____

Name of Law Practice: _____

Address of Law Practice: _____

Tel: _____ DID: _____ E-mail: _____

Contact Person: _____ Designation: _____

B. Book-Keeper's Particulars

Name of Book-Keeper: _____

Name of Book-Keeping Business: _____

NRIC No: _____ Registration No (UEN): _____

Tel: _____ Fax: _____ E-mail: _____

Residential Address: _____

C. Particulars of Professional Qualifications/Experience of Book-Keeper to be Engaged

Book-Keeper's Professional Qualifications: _____

Years of Book-Keeping Experience in a Law Practice: _____

Name(s) of Law Practice and Period(s) of Engagement:

Name of Law Practice	Period (in chronological order)

Note:

1. **Please attach the requisite original Statutory Declaration (‘*SD 1’*) of the book-keeper to this application.**
2. **Application will only be processed upon receipt of the original Statutory Declaration.**

For Official Use Only

Name of Officer Processing Application: _____

Date of Receipt of Application: _____

Remarks: _____

STATUTORY DECLARATION **SD 1**

Where Proposed Book-Keeper is:
1. An individual;
2. An accounting sole proprietorship; or
3. Any other sole proprietorship providing book-keeping services.

I, …….…….. (name) (holder of NRIC No ……..…….) residing at ……..……. (residential address) do solemnly and sincerely declare that:

Employment

1. I am a proprietor of a book-keeping business known as ……. whose place of business is ……. A copy of the Accounting and Corporate Regulatory Authority ('ACRA') search of the business/company is attached as 'Exhibit A'.

Declaration of Independence

2. I ……. am not an employee, a spouse, a child, an adopted child, a step-child, a sibling or a parent of the proprietor/any partner/any director of the law practice to which book-keeping services will be provided by me. I undertake to inform the Council in writing immediately if there is any change to the above.

Qualifications or Relevant Experience

3. I ……. providing the book-keeping services to the law practice possess the following qualification(s) (tick whichever box applies):

(a) London Chamber of Commerce and Industry [ ]

(b) Association of Accounting Technicians [ ]

(c) Certified Accounting Technician [ ]

(d) A diploma in accounts from a polytechnic [ ]

(e) Passed ACCA level 2 [ ]

(f) A Degree in Accountancy [ ]

Each selected qualification (above) has its certified true copy of the certificate attached as 'Exhibit B'.

OR

I ……. providing the book-keeping services to the law practice possess the following qualification(s) (check whichever box applies):

(a) London Chamber of Commerce and Industry [ ]

(b) Association of Accounting Technicians [ ]

(c) Certified Accounting Technician [ ]

and have one year's experience in writing up the books and accounts required under rule 11 of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) for the following law practices:

Name of Law Practice	Period (in chronological order)

Each selected qualification (above) has its certified true copy of the certificate attached as 'Exhibit B'.

OR

I …… providing the book-keeping services to the law practice and have five years' of experience in writing up the books and accounts required under rule 11 of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) for the following law practices:

Name of Law Practice	Period (in chronological order)

Mandatory Book-Keeping Course

4. I ……..…… providing the book-keeping services to the law practice have completed the book-keeping course prescribed by the Council of the Law Society.

OR

I …….. providing the book-keeping services to the law practice have **NOT** completed the book-keeping course and I undertake to complete the prescribed course within 12 months of my being so appointed.

Undertaking

5. I hereby undertake to inform the Council of the Law Society, in writing immediately if I encounter any of the following issues in writing up the books and accounts of the law practice except trivial breaches due to clerical errors or mistakes in book-keeping that were rectified upon discovery and did not result in any loss to the client:

   (a) I am unable to reconcile the balance in the client's cash book (or client's column in the cash book) with the bank statements for all or any of the law practice's client accounts, conveyancing accounts or conveyancing (CPF) accounts in any month;

   (b) I am unable to properly write up the books and accounts as required by rule 11 of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed);

(c) the law practice has received, held or authorised the withdrawal of client's conveyancing money in contravention of the applicable provisions of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) or the Conveyancing and Law of Property (Conveyancing) Rules 2011 (S 391/2011), or both; and

(d) the law practice has failed to respond to such query from me as is necessary to enable me to carry out my duties referred to in paragraphs 5(a), 5(b) or 5(c) above.

6. I further undertake to inform the Council of the Law Society in the event the law practice draws from a client account a sum exceeding S$30,000.00 without a second signatory.

7. AND I make this solemn declaration by virtue of the provisions of the Oaths and Declarations Act (Cap 211, 2001 Rev Ed), and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

DECLARED at Singapore
This _____ day of _____ 20___

Before me,

A Commissioner for Oaths

To : The Council
The Law Society of Singapore
39 South Bridge Road
Singapore 058673

BK FORM 2

Year of Application: 20 ____

APPLICATION FOR APPROVAL OF A BOOK-KEEPER TO BE ENGAGED BY A LAW PRACTICE

(Where Proposed Book-Keeper is an Accounting/ Book-Keeping Firm or Company or LLP)

A. Law Practice's Particulars

Name of Proprietor/Managing Partner/Director: _____

Admission No: _____

Name of Law Practice: _____

Address of Law Practice: _____

Tel: _____ DID: _____ E-mail: _____

Contact Person: _____ Designation: _____

B. Accounting/Book-Keeping Firm/Company/LLP's Particulars

Name of Proprietor/Managing Partner/Director: _____

NRIC No: _____

Name of Business/Company/LLP: _____

Address of Business/Company/LLP: _____

Registration No (UEN): _____ Tel: _____

Fax: _____ E-mail: _____

Note:
1. **Please attach the requisite original Statutory Declaration (*'SD 2'*) of the book-keeper to this application.**
2. **Application will only be processed upon receipt of the original Statutory Declaration.**

For Official Use Only

Name of Officer Processing Application: _____

Date of Receipt of Application: _____

Remarks: _____

STATUTORY DECLARATION **SD 2**

Where Proposed Book-Keeper is:
1. An accounting firm;
2. An accounting corporation;
3. An accounting LLP; or
4. A firm or body corporate providing book-keeping services.

I, ... (name) (holder of NRIC No .....) residing at ..... (residential address) do solemnly and sincerely declare that:

Employment

1. I am the proprietor or managing partner or managing director of the accounting/book-keeping firm/company/LLP …… duly registered with the Accounting and Corporate Regulatory Authority ('ACRA'). A copy of the ACRA search of the firm/company/LLP is attached as 'Exhibit A'.

Declaration of Independence

2. I hereby declare that neither I nor any partner, director or employee of the accounting/book-keeping firm/company/LLP is a spouse, a child, an adopted child, a step-child, a sibling or a parent of the proprietor/any partner/any director of the law practice to which book-keeping services will be provided. I undertake to inform the Council in writing immediately if there is any change to the above.

Qualifications or Relevant Experience

3. I/the following person …… providing the book-keeping services to the law practice possess the following qualification(s) (tick whichever box applies):

(a) London Chamber of Commerce and Industry [ ]

(b) Association of Accounting Technicians [ ]

(c) Certified Accounting Technician [ ]

(d) A diploma in accounts from a polytechnic [ ]

(e) Passed ACCA level 2 [ ]

(f) A Degree in Accountancy [ ]

Each selected qualification (above) has its certified true copy of the certificate attached as 'Exhibit B'.

OR

I/the following person …… providing the book-keeping services to the law practice possess the following qualification(s) (check whichever box applies):

(a) London Chamber of Commerce and Industry [ ]

(b) Association of Accounting Technicians [ ]

(c) Certified Accounting Technician [ ]

and have one year's experience in writing up the books and accounts as required under rule 11 of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) for the following law practices:

Name of Law Practice	Period (in chronological order)

Each selected qualification (above) has its certified true copy of the certificate attached as 'Exhibit B'.

OR

I/the following person ……..…… providing the book-keeping services to the law practice have five years' of experience in writing up the books and accounts as required under rule 11 of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) for the following law practices:

Name of Law Practice	Period (in chronological order)

Mandatory Book-Keeping Course

4. I/the following person …… providing the book-keeping services to the law practice has/have completed the book-keeping course prescribed by the Council of the Law Society.

OR

I/the following person …… providing the book-keeping services to the law practice has/have not completed the book-keeping course and I/we undertake to complete/to ensure that such person completes the prescribed course within 12 months of my/our being so appointed.

Undertaking

5. I hereby undertake to inform the Council of the Law Society, in writing immediately if I or any book-keeper encounters any of the following issues in writing up the books and accounts of the law practice except trivial breaches due to clerical errors or mistakes in book-keeping that were rectified upon discovery and did not result in any loss to the client:

(a) unable to reconcile the balance in the client's cash book (or client's column in the cash book) with the bank statements for all or any of the law practice's client accounts, conveyancing accounts or conveyancing (CPF) accounts in any month;

(b) unable to properly write up the books and accounts as required by rule 11 of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed);

(c) the law practice has received, held or authorised the withdrawal of client's conveyancing money in contravention of the applicable provisions of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) or the Conveyancing and Law of Property (Conveyancing) Rules 2011 (S 391/2011), or both; and

(d) the law practice has failed to respond to such query from me as is necessary to enable me to carry out my duties referred to in paragraphs 5(a), 5(b) or 5(c) above.

6. I further undertake to inform the Council of the Law Society in the event the law practice draws from a client account a sum exceeding S$30,000.00 without a second signatory.

7. AND I make this solemn declaration by virtue of the provisions of the Oaths and Declarations Act (Cap 211, 2001 Rev Ed), and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

DECLARED at Singapore
This _____ day of _____ 20___

Before me,

A Commissioner for Oaths

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.3

[Formerly PDR 1989, misc section, query 1]

QUERY: ACCOUNTANT'S REPORT RULES – ACCOUNTING PERIOD UNDER REVIEW AND RECONCILIATION OF LEDGER BALANCE

1. Question: With respect to solicitors (as defined by the subsidiary legislation) who cease to be a member of a law practice should the accounting period under review end on the date they leave the law practice?

Answer: Yes.

---

2. Question: If the answer is yes, is it sufficient to perform a reconciliation of the ledger balance, to bank balances on only one date considering the following:

(a) A solicitor who resigns during the year to join another law practice of solicitors will have two accountant reports for that particular year. If rule 4(1)(*f*) of the Legal Profession (Accountant's Report) Rules (Cap 161, R 10, 2010 Rev Ed) ('ARR') is to be strictly adhered to, there will be four dates of reconciliation.

(b) It becomes difficult in practice to comply with rule 4(1)(*f*) of the ARR since partners resign during the year and this could lead to delays.

Answer:

The accountant has to be satisfied that the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR') have been complied with. In the situation envisaged in paragraph 2(a), Council will be entitled to exercise its power under rule 12 of the SAR but Council notes:

(i) The 'accounting period' is not necessarily a year and the accounting period of the law practice from which the solicitor retires is not necessarily the same as that of the law practice to which he/she is admitted.

(ii) It may happen that the solicitor retires near the end of the accounting period of one law practice and is admitted just after the commencement of the accounting period of another just as it may be that the retirement and admission are in the first month of both accounting periods in which case it may not be possible to carry out the required reconciliations. Each case has to be considered on its own merits.

The Council does not see that paragraph 2(b) is a valid reason for not carrying out the required reconciliations.

Council recognises that there may be instances where by operation of rules 8 and 9 of the ARR, the relevant accounting period for the purpose of section 73(3) of the Legal Profession Act (Cap 161, 2009 Rev Ed) may cover a period as brief as one month. However, the examination under rule 4(1)(*f*) of the ARR is only one of several procedures to be carried

out to enable you to be satisfied that the solicitor concerned has complied with the provisions of the SAR. Further examination may be necessary and this is envisaged by rule 4(3) of the ARR.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.4

[Formerly PDR 1989, misc section, query 2]

QUERY: ACCOUNTANT'S REPORT RULES – DELIVERY OF ACCOUNTANT'S REPORT BY SALARIED PARTNERS

The Council takes the view that, if a salaried partner's name appears on the notepaper of the law practice, he/she is held out to the public as being a partner in the law practice. There is no distinction in law between him/her and any other partner. The fact that he/she is receiving his/her share of the profits by a fixed annual sum is a matter of domestic arrangement between him/her and the other partners: he/she therefore is equally liable to the public, his/her clients, with the other partners, and in these circumstances rule 6 of the Legal Profession (Accountant's Report) Rules (Cap 161, R 10, 2010 Rev Ed) apply to him/her and he/she must deliver an accountant's report.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.5

[Formerly PDR 1989, misc section, query 3]

QUERY: DEPOSIT INTEREST RULES – APPLICATION OF RULE 2 TO CLIENT MONEYS

Question: We would like to seek clarification of rule 2 of the Legal Profession (Deposit Interest) Rules (Cap 161, R 5, 2010 Rev Ed) ('DIR'). Is rule 2 to be applied to the sum of all balances belonging to the same client, when each balance is in a separate client current account as each balance pertains to a different legal matter?

For example, a solicitor (as defined by the subsidiary legislation) is handling four different legal matters for the same client and client's money relating to each matter is recorded separately in four different client current accounts. Individual balances in each of these four accounts are below $5,000 but in total, the sum of all the balances exceed $5,000 and was held in a current account for more than four months. Does this constitute a breach of rule 2?

Answer: Rule 2 of the DIR provides as follows:

> "(1) Subject to rule 4, a solicitor who receives any money exceeding the threshold amount for or on account of any particular client to hold in the applicable circumstances —
>
> (*a*) must —
>
> (i) deposit the money separately in a bank or an approved finance company by way of fixed deposit repayable on demand in compliance with paragraph (3); and
>
> (ii) account to the client for all interest earned on the money deposited; or
>
> (*b*) must pay to the client out of the solicitor's own money the amount of the interest which would have accrued for the client's benefit if the money had been deposited in accordance with sub-paragraph (*a*)(i).
>
> **…**
>
> (4) In this rule —
>
> "applicable circumstances", for a solicitor who receives money for or on account of a client, means circumstances in which —
>
> (*a*) the solicitor knows, from the instructions to the solicitor when receiving the sum of money, that the sum will not, within 4 months after the receipt of the sum, be withdrawn in whole or reduced to a sum below the threshold amount (if paragraph (1) applies) […] for or on account of the client; and
>
> (*b*) the sum of money is not so withdrawn or reduced within that 4 months;
>
> **…**
>
> "threshold amount", for money received by a solicitor for or on account of a particular client, means —
>
> (a) $5,000 (or the equivalent in foreign currency on the date of receipt) if received from that client before 1 December 2015[.]"

The reply to the question in the first paragraph would be that the solicitor should apply rule 2(1) read with rule 2(4) of the DIR, to each sum of money received for or on account of a client,

be it in respect of one matter or several matters, at the time of receipt of such sum. The solicitor should, therefore, deal with the sum in accordance with rule 2(1)(*a*) or 2(1)(*b*) or not at all, as is applicable.

A sum, for instance if less than $5,000 if received from the client before 1 December 2015, is not to be considered in aggregation with any other sum received for or on account of that same client at a subsequent time, for the same or other matters.

The reply to the question in the second paragraph would be that the solicitor in the example given is not in breach of rule 2 of the DIR.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.6

[Formerly PDR 1989, miscellaneous section, query 6]

QUERY: SOLICITORS' ACCOUNTS RULES – APPLICATION OF THE RULES ON CASH, CHEQUES AND DEPOSIT ACCOUNTS

1. Question: Cash or cheques received by a solicitor (as defined by the subsidiary legislation) but which is immediately endorsed or paid to a third party (payee) in the ordinary course of business.

As you will be aware, this is a very common practice particularly in conveyancing where such money may pass through a number of solicitors before it is paid into the payee's account.

Rule 9(1) of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR') does not require a solicitor who received such money to pay the same into a client account. In such a case, no entry would be made in the client cash book. Rule 11(2) of the SAR however requires, among other things, all dealings (referred in rule 11(1)(*a*) of the SAR) with client's money received, held or paid by a solicitor be recorded in a client's cash book or transfer records and in a client ledger.

In the application of these rules, is it correct to state that rule 11(2) of the SAR would apply to cash and cheque which is not restrictively crossed (*eg*, a bearer cheque) in favour of the third party because the solicitor has control over and can manipulate the money so received? If this is so and if the cash or cheque is not paid into a client account, entries should still be made in the transfer records and the client ledger?

However, if the cheque in question is restrictively crossed (*ie*, a 'non-negotiable') account payee only cheque, in favour of the third party, the solicitor will then have no control over and cannot manipulate the money included in such a cheque which cannot be banked into a client account. In fact, the solicitor cannot dispose of the cheque in any other way except to pass it on to the third party. In such a case, is the solicitor still required to make any entry in the transfer records and the client ledger if there are adequate records in the client's file relating to the transaction?

Answer: "Cheque" and "draft" in rule 9(1)(*b*) of the SAR can only mean a cheque or draft payable to bearer or to the solicitor himself/herself as otherwise it cannot be indorsed by the solicitor. A cheque or draft payable to the client or a third party is not covered by this rule and is not client's money because it is not money received or held by the solicitor. It is not covered by rule 11 of the SAR.

In the situations covered by rules 9(1)(*a*) and 9(1)(*b*) of the SAR, the money is not paid into a client account (*ie*, a bank account maintained for this purpose) but is dealt with and rule 11(2B) of the SAR requires that properly written up books must be kept to show such dealings.

2. Question: Interest on stakeholder money placed on deposit account.

Stakeholder money is no doubt client's money which is normally placed by the solicitor on a specific deposit account. If the solicitor is entitled to retain the interest earned on stakeholder money in accordance with the ruling adopted by the Council of the Society, such interest is therefore not client's money.

In practice most solicitors treat interest on stakeholder money as their entitlement only when the matter has been completed. This is to allow them the flexibility of passing on the interest earned to their clients in certain cases. To preserve the principal and cumulative interest applicable to each matter, it is more convenient to roll over both principal and interest on each expiry date although this may have the implication of leaving non client's money in client account. Upon completion of the matter, the principal will be paid over to the relevant party and the interest transferred to the office account if the solicitor is to retain the interest in accordance with the Society's ruling.

In this case, would the treatment of principal and interest be in order and is it still necessary for the solicitor to advise his/her client when he/she is making a transfer of interest from the client (deposit) account to the office account although he/she is entitled to such interest earned?

Answer: Money received by the solicitor as a stakeholder (in connection with his/her practice as a solicitor) is client's money. It should however not be credited to the particular client for whom the solicitor is acting but to a separate stakeholder account. This is because the money does not belong to the client or to the other party until after the happening of the contingency. If the money is deposited at interest the interest belongs to the solicitor (in the absence of any agreement to the contrary) and when it has been earned it should be paid to the solicitor and not paid into the client account. If it has been inadvertently paid into the client account it must be transferred out without delay.

Where a deposit is 'rolled over' the interest earned is added to the original deposit and the aggregate amount is deposited at interest. The interest is money to which the only person entitled is the solicitor himself/herself and is therefore not 'client's money'. Rule 6 of the SAR will be breached by rolling over in cases where the solicitor is entitled to the interest earned by depositing client's money at interest. The Council considers the practice of maintaining 'flexibility' to be undesirable.

[Note: For the avoidance of doubt, this does not apply to conveyancing money. Members' attention is also drawn to the Law Society's Guide to Solicitors' Accounts, paragraph 7.4.]

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.7

[Formerly PDR 1989, miscellaneous section, query 4]

QUERY: SOLICITORS' ACCOUNTS RULES – OPENING A FIXED DEPOSIT ACCOUNT WITH FINANCE COMPANY

Question: We have taken over the conduct of a matter whereby we are required to hold as stakeholder, a balance sum of money for a period of time.

Our client has instructed us to put the moneys into fixed deposit account with finance company.

Kindly clarify if we are at liberty to do so. Reference is hereby made to rules 9(2) and 9(4) of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR').

Answer: The Council is of the view that, *prima facie*, as stakeholder's moneys is clients' moneys within the definition of rule 2 of the SAR, it must be paid into a bank account. As a stakeholder, the solicitor (as defined by the subsidiary legislation) ordinarily gets the interest unless it is agreed that the stakeholding interest goes to the client or the other party.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.8

[Formerly PDR 1989, misc section, query 5]

QUERY: SOLICITORS' ACCOUNTS RULES – PAYMENT INTO CLIENT AND OFFICE ACCOUNTS

The Council has adopted the following rulings recommended by the Solicitors Accounts Rules Committee. Members are requested to note them.

1. Question: Can a solicitor (as defined by the subsidiary legislation) pay sums received as costs to account into an office account without having to render a bill for any part of the work done in a matter?

Answer:

(a) Situation where a bill or written intimation need not be rendered

Where the money is expressly paid to him "as an agreed fee (or on account of an agreed fee) for business undertaken or to be undertaken" – Rule 9(2)(*c*)(ii) of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR').

(b) Situation where a bill or written intimation needs to be rendered

Where the fee has not been agreed but costs have been incurred and a bill or written intimation had been delivered in respect thereof – Rule 9(2)(*c*)(i) of the SAR.

(c) Situation where the sums received as costs cannot be paid into an office account whether or not a bill or written intimation is rendered

Where work has not yet commenced, and the fee has not been agreed – Rules 9(2)(*c*)(i) and 9(2)(*c*)(ii) of the SAR.

Such sums must first be paid into the clients account as directed by rule 3(1) of the SAR. However, once costs have been incurred and a bill or written intimation delivered, the money may be withdrawn from the clients account and paid into the office account – Rule 7(1)(*a*)(iv) of the SAR.

---

2. Question: Can sums received as costs and disbursements be placed in an office account instead of a client account?

Answer:

(a) Costs

Yes, sums received as costs can be placed in an office account instead of a client account if:

(i) It is an agreed fee – Rule 9(2)(*c*)(ii) of the SAR.
(ii) It is not an agreed fee, but costs have been incurred and a bill or other written intimation of the amount of costs has been delivered for payment – Rule 9(2)(*c*)(i) of the SAR.

(b) Disbursements

Yes, sums received on account and for the payment of disbursements can be placed in office account instead of a client account if it amounts to money received "in reimbursement of money expended by the solicitor on behalf of a client" – Rule 9(2)(*b*) of the SAR.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.9

[Formerly PDR 1989, miscellaneous section, query 7]

QUERY: SOLICITORS' ACCOUNTS RULES – SELF REPRESENTATION BY SOLICITOR OR REPRESENTATION BY FIRM WHERE SOLICITOR IS PARTNER

Question: Please let me have your ruling as to whether a solicitor (as defined by subsidiary legislation):

(a) Can be his/her own client?

(b) Can be the client of a firm in which he/she is a partner?

(c) Whose firm is acting for him/her can receive moneys into his/her clients' account in a matter in which his/her firm is acting for him/her as solicitors on record?

Answer:

(a) Whether a solicitor can be his/her own client?

As the query seems to be concerned with the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR'), the Council wishes to give its views solely in the context of the SAR and its definitions, in paragraph (c) below.

(b) Whether a solicitor can be the client of a firm in which he/she is a partner?

See paragraph (a) above.

(c) Whether a firm of solicitors can pay into client account money received from (or for) a partner in a matter in which his firm is acting for him as solicitors?

The question has been rephrased, hopefully to identify the real issue.

The SAR defines 'client's money' so as to exclude solicitor himself/herself, or in the case of a firm, one or more of the partners thereof, 'client' is defined as a person on whose account a solicitor holds or receives 'clients' money'. Therefore if only the solicitor, whether as a sole proprietor or a partner, is entitled to the subject money, then for the purposes of dealing with such money under the SAR:

(i) it is not client's money;

(ii) it may not be paid into the client account unless permitted under rules 4 and 5(3) of the SAR (which probably do not apply here); and

(iii) he/she cannot be his/her own client or a client of a firm in which he/she is partner.

On the other hand if the solicitor is not entitled at all, or is not the only person entitled, to the subject money, then for the purposes of dealing with such money under the SAR:

(i) it may be client's money within rule 2 of the SAR; and

(ii) if it is, it must be paid into the client account.

The Council expresses no views as to whether a solicitor may be regarded as his own client for any purpose other than that of the SAR.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.10

[Formerly PDR 2013, para 79B; Council's Practice Direction 3 of 2011]

RESPONSIBILITIES AND DUTIES OF A SECOND SIGNATORY UNDER THE LEGAL PROFESSION (SOLICITORS' ACCOUNTS) RULES

This Practice Direction supersedes Council's Practice Direction 1 of 2007 and Practice Direction 3 of 2007. It sets out the responsibility and duties of a solicitor (as defined by the subsidiary legislation) when he/she acts as a second signatory to any cheque or any authorisation for withdrawal of moneys from any client under the Legal Profession (Solicitors' Account) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR') and the circumstances when fees may be chargeable by the second signatory.

A. Basic Responsibility

A solicitor who acts as a second signatory must verify that every withdrawal of money from the client account as contemplated under rule 7 of the SAR complies with rule 8 of the SAR.

This is verified by the second signatory by complying with the duties set out in this Practice Direction.

B. Duties of the Second Signatory

The second signatory must take reasonable steps to check that money to be withdrawn were deposited into and is to be withdrawn from the client account.

The second signatory must review supporting documents shown to him/her by the first signatory solicitor to support the withdrawal from the client account.

If the first signatory does not disclose sufficient information and or documents for the second signatory to carry out his/her duties under this Practice Direction then the second signatory should not sign the cheque or other authorisation of withdrawal.

C. Relevant Supporting Documents to be shown to Second Signatory

This Practice Direction cannot prescribe the supporting documents that a second signatory must have sight of in every type of case to ensure that the withdrawal will be in compliance with rules 7 and 8 of the SAR.

However, some examples of documents are as follows:

a) For the withdrawal of costs and disbursements from the client to office account, sight of a copy of the bill of costs or other written intimation of costs sent to the client in compliance with the two-day notice requirement as prescribed in Council's Practice Direction on "Drawing Money for Legal Costs from Client Account" (Practice Direction 3.3.1). That endorsed on the bill of costs or in a cover letter is a notice to the client that if the client has no objection to the bill within two days of posting the transfer of money from the client to office account will take place.

b) For the withdrawal of money from the client account to pay damages due to the client or in a matrimonial matter for payment of maintenance, the relevant

settlement letter, agreement or order of court evidencing the sum as payable to the client or third party named in the cheque or authorisation.

c) If any payment is to be made to an agent of the client, a written letter of authority signed by the client to the law practice consenting to the payment of client money to the named agent.

The Council wishes to remind members that solicitors acting as a second signatory for withdrawal of money from the client account and who fail to exercise reasonable care may be liable in tort to the beneficiary.

Fees Chargeable by the Second Signatory

Council permits the second signatory to charge a fair and reasonable fee for carrying out his/her duties and responsibilities as a second signatory.

A fee can only be charged if a solicitor acts as a second signatory to the client account of another law practice.

The fee charged must be to carry the duties set out above namely to take reasonable steps to check the moneys to be withdrawn were deposited into and are to be withdrawn from the client account and review supporting documents submitted to evidence the withdrawal in compliance with rules 7 and 8 of the SAR.

The first and second signatories must agree on the fee payable to the second signatory and that the second signatory will observe the confidentiality of client matters for which he/she is performing his/her duties as a second signatory.

Prior to the engagement of the second signatory, the client of the law practice of the first signatory must be informed that:

a) a second signatory is required for the client's matter under the SAR and that the law practice will engage a second signatory from another law practice; and

b) the second signatory has agreed to observe the confidentiality of client matters for which he/she is performing his/her duties as a second signatory.

The law practice must inform and explain to the client, in accordance with the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015), the arrangements with regards to the fees to be charged by the second signatory, if any.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.11

ONLINE DIGITAL PAYMENTS FROM CLIENT ACCOUNTS

1. In this practice direction, unless the context otherwise requires:

   "**App**" shall mean the application on a smartphone used by a regulated financial institution for effecting online digital transactions.

   "**Approved Biometric Authentication**" shall mean the method using fingerprint or facial recognition through the smartphone's function used by the App to authenticate the user when logging into the App.

   "**Regulated Online Digital Payment**" shall mean the online digital payment stated in rule 8(5) of the Legal Profession (Solicitors' Accounts) Rules.

2. Rules 2(1), 8(4A), 8(5) and 8(7) of the Legal Profession (Solicitors' Accounts) Rules have been amended to allow for online digital payments for money drawn from client accounts.

3. An App must be used for any Regulated Online Digital Payment. When logging into the App, the authorising solicitor must do so using an Approved Biometric Authentication. After logging into the App, any Regulated Online Digital Payment can then be authorised using such method or methods prescribed by the App.

4. For the avoidance of doubt, any Regulated Online Digital Payment must not be conducted through regulated financial institutions' websites accessed via browsers on laptops, personal computers and other devices.

5. The requirement of the Approved Biometric Authentication by each solicitor at the time of logging into the App seeks to ensure there are 2 solicitors authorising any Regulated Online Digital Payment. Solicitors are reminded not to relinquish their control of the App by any means.

6. All of the responsibilities and duties of a second authorising solicitor in Practice Direction 3.3.10 continue to apply.

Date: 23 May 2023

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.3.1

[Formerly GN 2013, para 4; Council's Guidance Note 1 of 2008]

DEPOSIT OF MONEYS IN THE CLIENT ACCOUNT OF A LAW PRACTICE

1. Under rule 2 of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR'), the definition of "client's money" does not include "money held or received on account of the trustees of a trust of which the solicitor is solicitor-trustee" or "money to which the only person entitled is the solicitor himself or, in the case of a firm of solicitors, one or more of the partners in the firm".

2. Therefore money that belongs only to a proprietor or sole director of a law practice or one or more partners of a partnership firm is not client money and cannot be deposited in the law practice's client account.

3. The basis for the rule is that a solicitor (as defined by the subsidiary legislation) must separate money belonging to him/her from money belonging to the "client" (as defined in the SAR).

4. The Council of the Law Society was asked for guidance on whether a partner of a limited liability law partnership or a director of a law corporation could place money in the client account of such a law practice when the only person entitled to the money was a partner or director of the said partnership or corporation.

5. The Council noted the current rule 2 as drafted in the SAR seemed to permit the deposit of moneys in the client account even if the only person entitled to it was a partner or director of a limited liability law partnership or a law corporation.

6. The Council accepted the guidance of the (then) SAR Committee that the fact that a limited liability law partnership or a law corporation is a separate legal person from its partners or directors did not make the principle that a solicitor must not mix moneys he/she alone is entitled to with "client's money" of the law practice any less applicable.

7. The Council's guidance to members is not to deposit in their law practice client account moneys to which the only person entitled is a partner or director of a limited liability partnership or a law corporation.

[Note: The Council had proposed to the then Honourable the Chief Justice Chan Sek Keong to amend paragraph (b) of the definition of "client's money" to read that it does not include "moneys to which the only person entitled in the case of a sole proprietorship, the solicitor himself, in the case of a firm of solicitors or a limited liability partnership, one or more of its partners and in the case of a law corporation, one or more of its directors".

Members should note that the definition of "client's money" in rule 2 of the SAR has already taken into account Council's guidance in paragraph 7 above.]

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.4.1

CLOUD COMPUTING

1. This Guidance Note takes effect on 10 March 2017.

A. Introduction

2. Cloud computing can be described generally as IT services provided by a cloud service provider ("**service provider**") which users can access on demand through the Internet.

3. Cloud computing is most commonly used for storing and transferring files across several devices. Common cloud services include Microsoft Office 365, Google Drive, Dropbox and Amazon Web Services.

4. Cloud computing has its benefits, including:

   (a) Enabling lawyers to work remotely from anywhere with an internet connection.

   (b) Reducing the costs of document management. This could potentially level the playing field for smaller law practices by helping them handle voluminous documents despite having fewer support staff and limited office space.

   (c) Enabling lawyers to spread out their costs, as many cloud services are subscription-based and billed monthly.

   (d) Providing a level of IT security that meets or exceeds that which is available from on-premises solutions within law practices.

5. While it has its benefits, a cloud computing arrangement, like any technology project, may give rise to certain issues. You must understand what these issues are and whether, as a result of these issues, there is a risk that your ethical and professional obligations may be compromised.

6. Your ethical and professional obligations include obligations under:

   (a) the Legal Profession Act (Cap 161, Rev Ed 2009) ("LPA");

   (b) the Legal Profession (Professional Conduct) Rules 2015 ("PCR");

   (c) the Personal Data Protection Act (Act 26 of 2012) ("PDPA");

   (d) the Personal Data Protection Regulations 2014 ("PDPR").

7. Provided that the issues outlined in this Guidance Note are properly addressed, the Law Society has no objection to the use of cloud services. The common service models and deployment models can be found in **Annex A**.

B. Scope of this Guidance Note

8. This Guidance Note is not prescriptive and is only a guide. It sets out generally the factors you should take into account in deciding whether to use cloud computing services, the issues that may arise and possible steps to address them. You can modify our suggested

steps in this Guidance Note. Depending on the circumstances, steps other than those suggested in this Guidance Note may also be appropriate.

9. This Guidance Note does not in any way detract from your professional and ethical obligations.

10. The Law Society does not endorse or prohibit you from using any particular service provider.

11. The following is a summary of the issues that may arise, your relevant professional and ethical duties, and our guidance on addressing these issues:

Part	Issues	Relevant duties (non-exhaustive)	Guidance
C	General issues	Ensuring adequate systems to maintain client confidentiality (rule 35(4) PCR)	The management of the law practice must take reasonable steps to ensure that the law practice has adequate systems, policies and controls in place to maintain client confidentiality
D	Your data is stored in servers overseas	Obligation to protect personal data (section 24 PDPA) Obligation not to transfer personal data out of Singapore without ensuring a standard of protection comparable to that required under PDPA (section 26 PDPA, regulation 9 PDPR)	Understand where your data is stored In relation to personal data, seek clients' consent if data is stored overseas or ensure that the transfer complies with the other exceptions under section 26 of the PDPA In relation to personal data, where client consent and other exceptions under the PDPA are not available, ensure that the data is stored in Singapore only
E	Your service provider has access to your data, or accesses your data to respond to a foreign authority's request	Duty of confidentiality (rule 6 PCR)	Ensure contractual terms state that your provider will not access your data for any secondary purpose (i.e. any purpose other than for providing the service to you – such as advertising) Consider if the service provider has a policy on government and law enforcement data access
F	Business continuity and access to your documents	Duty of competence and diligence (rule 5 PCR) Duty to retain documents for prescribed periods of time – e.g. section	Ensure contract provides for a minimum service availability and compensates you if this standard is not met Ensure service provider has continuity plans and procedures in place and that these are regularly

Part	Issues	Relevant duties (non-exhaustive)	Guidance
		70E LPA	tested and updated to minimize risk of service disruption Require service provider to return data to you in a non-proprietary format if the provider becomes insolvent Back up key documents so you can access them during service disruption
G	Security measures by service provider	Obligation to protect personal data (section 24 PDPA) Duty of confidentiality (rule 6 PCR)	Select a service provider with appropriate security measures in place (e.g.accreditation, encryption technology that meets or exceeds international standards) Take reasonable steps to negotiate for contractual remedies if your provider is hacked Ensure your law practice has good internal security practices
H	Service provider could retain data after client retainer ends	Obligation to retain personal data only as long as necessary (section 25 PDPA) Obligation to return documents when retainer ends	Ensure contract provides for permanent deletion of data, including backup copies

C. General Issues Arising from a Cloud Computing Service Arrangement

12. If you consider that your law practice will benefit from using cloud computing services, you must decide on an appropriate service provider to engage.

13. In selecting a service provider, you could consider the provider's experience (including specific experience in the legal services sector) and reputation, and its registered address and location.

14. You must understand the issues that may arise from a cloud computing service arrangement and whether there is a potential risk that your professional and ethical obligations will be compromised as a result of these issues. The management of the law practice must take reasonable steps to ensure that the law practice has adequate systems, policies and controls in place to maintain client confidentiality (rule 35(4) PCR).

15. You must also understand the issues that may arise if the service provider uses sub-contractors, is acquired by another entity, or if the contract is otherwise assigned or novated.

16. You should, where possible, sign negotiated agreements with service providers, instead of 'take-it-or-leave-it' contracts.

D. Your Data is Stored in Servers Overseas

17. Service providers offer services from data centres in different locations across the world. Backing up data to multiple locations safeguards data in case servers in one location are damaged or destroyed.

18. You should be aware of where your data is stored. The laws in some jurisdictions may not offer comparable levels of protection to the laws here, and may permit foreign authorities to access your client's data without following appropriate legal processes.

19. You must protect personal data your law practice has. Under the PDPA:

    (a) Section 24 requires that your law practice make reasonable security arrangements to protect personal data in its possession or under its control.

    (b) The law practice has the same obligation regarding personal data processed by a data intermediary for its purposes as if the personal data was processed by the law practice itself (section 4(3)). Service providers may be data intermediaries for the purposes of the PDPA.

20. You must not transfer personal data out of Singapore unless you take appropriate steps to ensure that the recipient of the personal data is bound by legally enforceable obligations to provide to the personal data transferred a standard of protection that is comparable to that under the PDPA (section 26(1) PDPA and regulation 9(1)(b) PDPR). This requirement is satisfied if:

    (a) The legally enforceable obligations are imposed in accordance with regulation 10 of the PDPR. Legally enforceable obligations include obligations imposed on the recipient under any law, or under any contract. A contract must:

        (i) require the recipient to provide to the personal data a standard of protection that is at least comparable to the protection under the PDPA, and

        (ii) specify the countries and territories to which the personal data may be transferred under the contract;

    (b) Your client consents to the transfer. In order to rely on consent, you have to provide to your client a reasonable summary in writing of the extent to which the personal data in that country or territory will be protected to a standard comparable to the protection under the PDPA (regulations 9(3)(a) and 9(4) PDPR); or

    (c) The other exceptions in regulation 9(3) of the PDPR apply – including where the transfer is necessary for the conclusion or performance of a contract between the law practice and third party which is entered into at your client's request (e.g. if a law practice engages local counsel in another jurisdiction, at the client's request); or which a reasonable person would consider to be in your client's interest.

21. We recommend that law practices insert in their engagement letters a clause informing clients:

    (a) That the law practice makes use of cloud services and clients' data may be stored overseas; and

(b) That the law practice will disclose details of their service providers at the clients' request.

22. The Personal Data Protection Commission provides a number of examples of how to comply with the PDPA when transferring data.

23. While you are not prohibited from storing data overseas, if you cannot obtain client consent or meet any exceptions in the PDPA, you should consider whether to use cloud providers that store data exclusively in Singapore.

24. The personal data may include the data of your law practice's staff and third parties. If so, your law practice must also ensure compliance with the PDPA in relation to such data stored in servers overseas.

E. Your Service Provider has Access to your Data, or Accesses your Data to Respond to a Foreign Authority's Request

25. You must maintain the confidentiality of any information which you acquire in the course of your professional work (rule 6(1) PCR). You may disclose confidential information if the client authorizes the disclosure (rule 6(3) PCR).

26. The use of cloud computing services may result in the disclosure of information that is confidential to your client. You should consider inserting clauses in your engagement letters to obtain the necessary consent from your client.

27. It may be that no information that is confidential to the client is stored on a cloud storage service. However, if there is confidential information stored on a cloud storage service, you should consider the following:

(a) Whether the service provider can access stored documents and, if so, whether the service provider commits not to use the data for any purpose other than providing the service (such as advertising).

(b) Whether the documents can be encrypted by the user before it is stored or whether your service provider uses encryption technology that meets or exceeds international standards. (You must exercise proper supervision over your staff in accordance with rule 32 PCR. If documents are to be encrypted before uploading to the cloud, steps must be taken to educate staff and workflows designed to ensure that this takes place.)

(c) Whether the service provider recognises your obligations to maintain client confidentiality.

(d) Whether the service provider uses sub-contractors to deliver its services and whether it accepts liability for any breach of confidentiality they commit.

28. In relation to sub-contracting, you must understand if the sub-contracting is for the whole or part of the subject matter of the contract, whether you can withhold consent to the sub-contracting, or if you have the right to review the terms of the sub-contract. You should take reasonable steps, where possible, to negotiate that the service provider is fully liable for the performance of the sub-contract.

29. In relation to a foreign government accessing your documents, consider whether the service provider has a policy on government and law enforcement data access including a commitment:

(a) not to hand over data to a third party unless required to do so by law;

(b) to redirect the request to you unless prohibited by law; and

(c) not to hand over encryption keys to third parties.

F. Business Continuity and Access to your Documents

30. You owe your client a duty of competence and diligence (rule 5 PCR). You may not be able to discharge this duty if, due to service disruption, you cannot access key documents stored on the cloud.

1. Availability of cloud services

31. You should consider whether the service provider will provide guarantees on when the cloud will be available.

32. Service providers commonly guarantee a minimum amount of “uptime”, e.g. guaranteeing their servers will be available 99.9% of the time. You should understand how your provider defines “service availability”:

(a) Point of measurement: availability of service provision or availability at the point of user consumption. This is normally a percentage figure.

(b) Service measurement period: even if a service boasts high availability, this could translate into relatively high downtime during normal working hours. Some providers may exclude scheduled maintenance from their availability measurements.

(c) Application availability: availability of particular applications may be just as important to you as general availability of a service.

2. Compensation if service is unavailable

33. You should also understand what compensation will be provided in case of service unavailability. Your provider may exclude or limit liability for your direct or indirect losses if their service is unavailable.

34. Service providers commonly offer service credit if they fail to meet their service level agreement, e.g. offering a period of free usage should a disruption of a certain threshold happen.

35. You should weigh up the relative merits of this regime against damages at common law. Accepting service credits as your sole and exclusive remedy may limit your right to sue for damages at large or to terminate the contract.

36. In general, if you keep hardcopies or other backups of documents, service credit regimes are likely to be adequate as they offer certainty and keep risk to identifiable and manageable levels.

3. Service provider should have continuity plans

37. You should ensure the service provider has continuity plans and procedures which are regularly tested and updated to minimize the risk of service disruption. Such plans could include:

(a) Redundancy arrangements to ensure that it can continue to operate if its IT infrastructure fails, or the cloud becomes unavailable.

(b) Whether the service provider backs up data, and if so, how often are backups done. You should be allowed access to a copy of the back-up data if there are cloud outages or if the service provider's IT infrastructure fails.

4. Other business continuity considerations

38. You should consider ensuring that if your service provider becomes insolvent or is restructured, you should be able to recover the data and transfer it back to your own IT infrastructure or to another service provider. The data should be returned in an industry standard, non-proprietary format.

39. You should consider backing up key documents so you can access them during service disruptions.

40. You should consider the risks associated with another entity obtaining control of your service provider. You should take reasonable steps, where possible, to negotiate appropriate terms to ensure that your interests are protected in such an event, e.g. negotiating:

(a) that you are given advance notice of any proposed change in the control of the service provider;

(b) that you have the right to terminate the contract; and

(c) that your prior written consent is required for any assignment or novation of the rights and obligations of the service provider.

41. You should also take reasonable steps, where possible, to negotiate that your service provider does not have the right to suspend services at its discretion. Alternatively, you should take reasonable steps, where possible, to negotiate appropriate terms to ensure your interests are protected, e.g. to permit suspension only for material breach or non-payment, and with prior notice.

42. You should consider how to properly store and protect your documents even if you do not use cloud computing. One should be careful not to overestimate the risk of unfamiliar technologies and underestimate the risk of existing methods of work. Physical documents or documents stored on internal servers may be lost through theft or fire, and having cloud backups could be a lifesaver in such situations.

5. Ensuring documents are stored for the requisite period of time

43. You must maintain documents and records for a prescribed period – e.g. for at least 5 years as part of the prevention of money laundering and financing of terrorism requirements (section 70E LPA). Documents include documents in electronic form.

44. You must also ensure authorities can gain access to your documents if necessary. Under the LPA, the Law Society or the Legal Services Regulatory Authority may request a law practice to produce documents or information:

(a) If required to produce any document or information as required by Council of the Law Society for purposes of prevention of money laundering and financing of terrorism inspection (section 70F LPA).

(b) If required by the Director of Legal Services to produce any documents or information (section 2C LPA).

45. You should ensure that the service provider does not delete any documents stored on cloud service storage without your consent.

G. Security Measures by Service Provider

46. Most major service providers invest significant resources in security. Depending on your law practice's current practices, storing documents on the cloud could be more secure than storing them on internal servers or as hardcopies.

47. You should find out from the service provider the security measures it has to protect data stored on the cloud. You may wish to ask:

(a) If your service provider uses encryption technology that meets or exceeds international standards; and

(b) if your service provider has any recognized accreditations.

A list of accreditations and further resources can be found in **Annex B**.

48. You should also take reasonable steps, where possible, to negotiate that your service provider will compensate you if it is hacked.

49. Although the service provider has security measures in place, your law practice should still ensure that it has its own IT security measures in place. Proper practice management is not the focus of this Guidance Note. However, we have included some illustrations to show how poor security practices or poor understanding of technology – as opposed to technology per se – can result in breaching your ethical obligations.

50. You should understand how to use technology.

Illustration: You run a sole proprietorship with support from your secretary. Both of you have global administration rights over all your documents stored on the cloud. You and your secretary have a dispute and she leaves your law practice. You find out that she has revoked your access rights entirely so you can no longer access your documents.

Guidance: Here the difficulties resulted because the lawyer did not understand or properly allocate administrator rights. You, and not your client or support staff, should retain administrator rights to your documents.

51. You should explain and enforce your security policies.

Illustration: After extensive negotiation, you have signed a contract with a reputable cloud services provider. The IT department sends an email announcing that all staff should use the new cloud platform from now on. The reason for the switch is not clear and other free cloud websites are not blocked on the law practice's computers. Your staff continue to transfer files via their personal cloud accounts or by sending emails to themselves.

Guidance: "Free" cloud services may generate income from processing data about you. They can pose serious data protection, client confidentiality and information security risks. Everyone in your practice should be alerted to these risks, and be

made aware of the need to use only approved service providers.

52. You may wish to refer to the Law Society's Practice Management Manual for a more comprehensive guide to best practices. We encourage all members to adopt a holistic approach to security.

H. Service Provider could Retain Data after Client Retainer ends

53. When you delete data from your cloud services account, it may not necessarily be deleted from all of your service provider's servers. For example, your service provider may temporarily retain deleted documents in case users deleted them by accident.

54. You have professional duties when your retainer ends (see rule 26 PCR). You should retain personal data only as long as necessary (section 25 PDPA) and return all documents which belong to your client when your retainer ends. Hence, you should be aware of your service provider's data retention policies, and ensure you can permanently delete or remove copies of the document stored with a service provider. You should retain absolute ownership of all data.

Date: 10 March 2017

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

Annex A: Overview of Cloud Service and Deployment Models

Annex A gives background information on cloud computing for members' understanding.

There are three common service models:

(a) Software as a Service (SaaS), where the service provider makes available software applications to customers;

(b) Platform as a Service (PaaS), where the service provider provides a computing platform for customers to develop and run their own applications; and

(c) Infrastructure as a Service (IaaS) where the service provider delivers IT infrastructure e.g. storage space or computing power.

There are four common deployment models, with Public Cloud being the most common:

(a) Public Cloud: Infrastructure is owned and managed by the service provider and located off-premises from the customer. Although data and services are protected from unauthorized access, the infrastructure is accessible by a variety of customers.

(b) Private Cloud: Infrastructure is usually managed by the service provider but sometimes by the customer. Infrastructure is located either on the customer's premises or, more typically, on the service provider's premises. Data and services are accessible exclusively by the particular customer.

(c) Community Cloud: Serves members of a community of customers with similar computing needs or requirements. Infrastructure may be owned and managed by members of the community or the service provider. Infrastructure is located either on the customer's premises or the service provider's premises. Data and services are accessible only by the community of customers.

(d) Hybrid Cloud: A combination of two or more of Public Cloud, Private Cloud, or Community Cloud.

Annex B: Accreditations and Further Resources

Annex B gives a non-exhaustive list of accreditations:

(a) Multi-Tier Cloud Security (MTCS): The MTCS Singapore standard is developed under the Information Technology Standards Committee (ITSC) for service providers in Singapore. A list of MTCS-certified service providers can be found on the Infocomm Media Development Authority's website.

(b) ISO 27018: Focuses on privacy and personally identifiable information.

(c) ISO 27001: Focuses on cybersecurity.

(d) SSAE 16 SOC 1 and 2.

(e) CSA Star.

The following resources may also help you to better understand cloud security measures:

(a) The Personal Data Protection Commission's Guide to Securing Personal Data in Electronic Medium (first issued on 8 May 2015, revised on 20 January 2017). Available at https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Other-Guides/guidetosecuringpersonaldatainelectronicmedium0903178d4749c8844062038829ff0000d98b0f.pdf.

(b) The Legal Cloud Computing Association (LCCA) Security Standards. The LCCA is a group of cloud computing companies which collaborates with bar associations and law societies to formulate standards. These are available at http://www.legalcloudcomputingassociation.org/standards/.

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.5.1

[Formerly PDR 2013, para 71; PDR 1989, chap 6, para 13]

PRINTING OF NAMES ON ENVELOPES

It is proper to use envelopes printed with the names of legal practitioners or the names of law practices with addresses and telephone numbers, provided such envelopes are used exclusively for professional business.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.5.2

[Formerly PDR 2013, para 69; Council's Ruling 1 of 2001]

RULE 33 OF THE LEGAL PROFESSION (PROFESSIONAL CONDUCT) RULES 2015

Rule 33(1) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015') states that the Council's approval must be obtained for the use of any description other than "advocate and solicitor", "lawyer", "legal consultant", "Commissioner for Oaths" or "Notary Public" to describe a legal practitioner.

The Council has approved the use of the following designations for Singapore advocates and solicitors:

(a) Sole Proprietor
(b) Partner
(c) Senior Partner
(d) Managing Partner
(e) Founding Partner
(f) Legal Assistant
(g) Associate
(h) Senior Associate
(i) Consultant
(j) Senior Consultant
(k) Counsel
(l) Director
(m) Managing Director
(n) Senior Executive Director
(o) Executive Director
(p) Senior Associate Director
(q) Associate Director
(r) Chairman
(s) Adviser
(t) Senior Adviser

Rule 33(2) of the PCR 2015 further states that the Council's approval must be obtained for the use of any description other than "foreign lawyer" and "legal consultant" (if qualified to be one) to describe a legal practitioner who is a regulated foreign lawyer.

The Council has also ruled from 12 January 2001 that the calling cards of directors of a law corporation must carry the description 'advocate and solicitor' after their designation.

The Council would kindly remind members that if calling cards are to be given to support staff employed in an executive capacity, the following information must be contained in the calling card:

(a) the name of the person for whose use the business card is provided; and

(b) the designation, which shall be stated in a manner as not to give the impression that he is a legal practitioner.

Members are reminded that it is the duty of the legal practitioner who provides the business card to ensure that the member of staff shall not use the business card without the authority of the firm or law corporation or in circumstances that will result in a breach of the PCR 2015.

Date: 02 June 2020

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.6.1

[Formerly PDR 2013, para 59; Council's Practice Direction 1 of 2005]

CLIENT CONFIDENTIALITY AND CONFLICT OF INTEREST FOR LOCUM SOLICITORS

This Practice Direction must be read in conjunction with the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') and Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015') which govern locum solicitors (as defined by the Act) who have been issued with a locum solicitor practising certificate as defined in section 2 of the LPA.

This Practice Direction sets out directions as for a locum solicitor and for member law practices who engage a locum solicitor.

For the avoidance of doubt, this Practice Direction will apply in addition to the LPA and PCR 2015.

A. Duty of Confidentiality

As a locum solicitor can practise in more than one law practice at any one time, the need for a locum solicitor and the law practice engaging him/her to ensure that client confidentiality is maintained when a locum solicitor practises in several practices is essential.

Therefore a locum solicitor and the law practice that engages him/her must respect the terms stated in rule 6 of the PCR 2015.

The issue of conflict of interest will be a very live issue for a locum solicitor for the same reasons specified above in this Practice Direction. The rules of conflict of interests enacted in rules 11 and 20–22 of the PCR 2015 apply to locum solicitor in addition to the common law principles on conflict of interests.

A locum solicitor must be familiar with the terms of the PCR 2015 described above so that he/she and the law practice that wishes to engage him/her can determine if he/she can be so engaged.

B. Disclosure of Existing and Intended Engagements as Locum Solicitor

A locum solicitor must, before acceptance of an engagement with a law practice, state the names of all law practices that had engaged him/her so that the practice and the locum solicitor may determine if the locum to be engaged may have acted or acts against a former or current client of the law practice. This way both parties can determine if any issues of conflict exist that need to be resolved.

A locum solicitor, during the course of engagement, must advise each law practice that engages him/her of the names of all law practices that he/she proposes to be engaged as a locum solicitor so that the law practice and locum solicitor may determine if any issues of conflict will exist that needs to be resolved.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.7.1

[Formerly PDR 2013, para 47]

PHOTOCOPY CHARGES

Council's Practice Direction 1 of 2003 issued on 15 February 2003 had set a new standard charge, as there was a reduction in the financial cost involved in acquiring a machine. The Council recommended a new flat charge of 15 cents per sheet where the law practice has its own machine.

A query has been brought to the attention of the Council as to whether the standard photocopying charge of 15 cents applies in respect of per page printed or per piece of paper used.

For the avoidance of doubt, the recommended photocopying flat charge of 15 cents applies in respect of per page printed. Therefore, in the case of double-sided printing, where one piece of paper is used to print two pages, the recommended photocopying charge is 30 cents.

After review, the Council has also decided to recommend the following photocopying charges for the respective paper sizes:

	Black and White or Colour Photocopying	**P a p e r Size**	**Recommended Photocopying Charge Per Page (*ie*, Side)**
1	Black And White Photocopying	A4	$0.15
2	Black And White Photocopying	A3	$0.50
3	Black And White Photocopying	A1	$3.00
4	Black And White Photocopying	A0	$5.00
5	Colour Photocopying	A4	$1.00
6	Colour Photocopying	A3	$2.00

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.7.2

[Formerly PDR 1989, chap 7, para 25]

SOLE PRACTITIONERS – ARRANGEMENTS FOR CONTINUANCE OF PRACTICE

General considerations

1. All sole practitioners should make appropriate arrangements in advance to ensure that in case of accident, illness or death, their practice can continue to function without undue interruption in relation to their clients' affairs. Members are referred to the recommended steps below which sole practitioners should take.

2. There is a need for contingency plans is to avoid difficulties that may arise in the day-to-day running of the practice, the administration of the client's files, court deadlines and hearings etc., as well as to avoid any inadvertent breach of any Law Society regulations.

3. The circumstances for which a sole proprietor or a sole director of a law corporation ('Principal Practitioner'), would be well-advised to make provisions in advance are:

   (a) Incapacity;
   (b) Absence from the office for other reasons; and
   (c) Death.

Considerations relating to incapacity

4. The Principal Practitioner should have a standing arrangement with another legal practitioner ('Cover Practitioner') near at hand who should be prepared on receipt of a call for assistance, if necessary accompanied by a medical certificate, to administer the practice in the event of the Principal Practitioner's incapacity until the Principal Practitioner returns. It would be prudent for the Cover Practitioner to be a partner or director of another law practice.

5. The Principal Practitioner is to notify the practice's bank in advance for purposes of operating the client and office accounts on behalf of the Principal Practitioner and so avoid the interruption of clients' business. A special negligence policy should also be arranged to indemnify the Cover Practitioner during his/her administration of the practice and notification be given to the insurers of the Principal Practitioner.

6. In this regard, the Law Society has no power to appoint a Cover Practitioner. If no Cover Practitioner was arranged, the Law Society may only intervene in the Principal Practitioner's law practice if the Council is satisfied that the sole practitioner is "incapacitated by illness or accident, or by any physical or mental condition, to such an extent as to be unable to attend to his practice" (see paragraph 1(1)(g) of the First Schedule to the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA')).

Considerations relating to absence from the office for other reasons

7. The Principal Practitioner would also be well advised to make suitable arrangements for a Cover Practitioner to administer his/her practice where he/she is likely to be away

from the office for any reason other than for short periods of time. Here again, the degree of supervision required will depend on the circumstances.

Considerations relating to death

8. It is good practice for the Principal Practitioner to make a will to facilitate the continuation and disposal of his/her practice. Whilst it is not necessary for him/her to nominate a solicitor as his/her executor or one of the executors, this would certainly facilitate the conduct of the practice upon his/her passing. Regardless of whether or not a Cover Practitioner is appointed as one of the executors, the testator (ie, the Principal Practitioner) should have clear instructions for the executor(s) to make arrangements immediately following his/her death for a practising solicitor to be appointed as a legal manager to carry on the practice pending its disposal.

9. Upon the death of the Principal Practitioner, it is for the executors (or the next-of-kin, if the Principal Practitioner dies intestate) to appoint a practising solicitor to be the legal manager to run the practice. The Law Society has no power to appoint one save when it warrants under situations in paragraphs 1(1)(a)(iii) and 1(1)(b) of the First Schedule to the LPA. Otherwise, arrangements for remuneration of the appointed legal manager is a matter between him/her and the estate.

10. It will also be necessary for the insurers to be advised of the death of the Principal Practitioner and of the arrangements made for the continuation of the practice.

11. Staff who are unauthorised persons, or anyone who does not hold a practising certificate, must not manage or control the practice in the absence of the Principal Practitioner. Every effort must be made by those responsible to find a legal manager, if necessary with the help of the Society.

12. Clients should be notified by the legal manager of the arrangements made for the continuance of the practice and whether they wish to continue with the law practice or arrange for alternative legal practitioners to take over their matter. The Society must also be notified of the legal manager appointed to run the practice and ultimately of the arrangements made for its disposal so as to enable it to direct queries from clients and other legal practitioners to the legal manager. As the legal manager, the same legal and ethical duties to clients apply to him/her.

13. Fresh books of account should be opened immediately following the Principal Practitioner's death and should be kept until the practice has been disposed of and clients' money received after the date of death and before grant of probate is obtained should be placed in a special client's suspense account. The legal manager and the executors are to note sections 114 and 159(11) of the LPA.

14. If the executors desire to sell the practice and the legal manager wishes to buy it, the legal manager should arrange for executors to be independently represented. In the case of a Principal Practitioner who dies intestate, a similar arrangement applies but it is for the next-of-kin to authorise the conduct of the practice by the appointed legal manager.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.7.3

[Formerly PDR 2013, para 99; PDR 1989, chap 7, paras 32 and 32(a)]

TELEX AND FACSIMILE CHARGES

Members of the bar are informed that the Council has ruled that IDD, telex and facsimile expenses can only be recovered as 'disbursements'. Please note that no surcharge introduced on any of these items is allowed as a disbursement.

The Council feels that there is a need to standardise charges for faxes especially in the case of overseas faxes because:

(a) Overseas faxes are charged on the basis of IDD telephone rates applied to the time the IDD line is occupied in making the fax. SingTel's measurement of such time, however, often varies with the sender's estimates.

(b) The cost of sending a fax varies in accordance with the time the fax is sent.

(c) SingTel's bill for each calendar month is sent out about halfway through the following month and identifying each fax charge in the bill and marrying it to the relevant file is a tedious and time-consuming business.

(d) There is a need for a legal practitioner to be able to cost a fax quickly. Only a standard fixed charge will enable him/her to do so.

The Council has, upon the request of members, reviewed this Practice Direction and made the following recommendations:

(a) For local and overseas faxes:

Black and white or colour faxes	**Paper size**	**Local** **Recommended fax charge per page (*ie*, side)**	**Overseas** **Recommended fax charge per page (*ie*, side)**
Black and white fax	A4	$0.15	50% of SingTel's published rate
Colour fax	A4	$1.00	

(b) Should any legal practitioner wish to charge at the actual amounts as invoiced by SingTel, he/she is always entitled to do so.

(c) The aforesaid fax charges may be recovered as disbursements.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.7.1

[Formerly Practice Circular dated 6 June 2014]

SUPERVISION OF PARALEGALS

1. This Guidance Note seeks to remind practitioners of their obligations regarding the regulation of paralegals employed by law practices. For the purposes of this Guidance Note, the term 'paralegal' shall mean and include a legal executive, legal secretary or legal clerk and any other employee of a law practice, who performs paralegal functions and assists a legal practitioner as a paralegal, who does not have in force a practising certificate and is without regard to the designation of such employee.

2. Sections 29, 32 and 33 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') prohibit persons without a valid practising certificate from practising law in Singapore and such persons fall within the category of "unauthorised persons" under the LPA. Paralegals working across law practices in Singapore also fall within the category of "unauthorised persons" and are not allowed to practise law as an advocate and solicitor (as defined by the Act).

3. While paralegals working at law practices in Singapore are currently not regulated under the LPA, rule 32 of the Legal Profession (Professional Conduct) Rules (S 706/2015) ('PCR 2015') requires a legal practitioner, regardless of the legal practitioner's designation in the law practice, to "exercise proper supervision over the staff working under the legal practitioner in the law practice".

4. Accordingly, legal practitioners and law practices employing paralegal staff should ensure compliance with the following guidelines, to appropriately abide by the provisions of the LPA and the PCR 2015:

(a) A legal practitioner shall ensure that he/she remains responsible for all professional actions of a paralegal and a paralegal performs his/her duties, at all times, under the constant supervision of the legal practitioner in relation to such paralegal's involvement in any legal matter.

(b) Legal practitioners should take due care to ensure that paralegals are not allowed to make any unsupervised appearance before any court in Singapore including hearings in judges' chambers and at pre-trial conferences.

(c) As a general principle, paralegals have no right of audience before any court in Singapore including open court sessions, hearings in judges' chambers and pre-trial conferences. Paralegals are, however, permitted to attend chambers and open court sessions to record notes of hearing, with the prior leave of the court. In the event the paralegal accompanies the supervising legal practitioner to court hearings and seeks to be in attendance at any hearing, it is the responsibility of the supervising legal practitioner to ensure that the court is fully made aware of the status of the paralegal before the commencement of proceedings. Even in such cases, paralegals are not permitted to occupy the front row seating area or any other seating area normally reserved for legal practitioners in the court without the permission of the court.

(d) Legal practitioners must ensure that paralegals refrain from engaging in any form of unsupervised conduct in litigation matters. In criminal matters, legal practitioners should restrict paralegals from engaging in any unsupervised discussions with enforcement agencies, police officers or prosecutors. For the avoidance of doubt, it

is hereby clarified that paralegals are permitted to take statements from and interview clients or witnesses in their client's case in the absence of the supervising legal practitioner provided that no advice is rendered on such occasions.

(e) Paralegals, by way of their association with the supervising legal practitioner, shall also be subject to rule 13(6) of the PCR 2015, which provides that a legal practitioner must not publish, or take steps to facilitate the publication of, any material concerning any proceedings, whether on behalf of his/her client, which amounts to a contempt of court or which is calculated to interfere with the fair trial of a case or to prejudice the administration of justice. Legal practitioners are required to ensure that their paralegal staff are made aware of their obligations under rule 13(6) of the PCR 2015.

(f) Section 77 of the LPA provides that no solicitor shall wilfully and knowingly undertake any action that may amount to enabling an unauthorised person to practise law in Singapore. Since a paralegal falls within the ambit of the term "unauthorised person" under the said section any action contrary to Section 77 LPA may warrant a disciplinary proceeding against the solicitor.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.8.1

[Formerly PDR 2013, para 81]

EXECUTIVE APPOINTMENTS AND ENGAGEMENT IN BUSINESS, TRADE OR CALLING

A. Executive Partnership/Directorship in Employment Agency, Firm or Company

[Formerly PDR 1989, chap 7, para 5(b)]

The assumption of an executive partnership or an executive directorship in an employment agency, firm or company may transgress section 83(2)(*i*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA').

B. Solicitor's Appointment as Company Secretary

[Ethics Committee Guidance: 29 May 2009]

It is proper for a solicitor (as defined by the Act) to be appointed as a company secretary, whether for the law practice's own clients or an external corporate secretarial firm's clients, in exchange for consideration.

However, if a solicitor acts as a company secretary for an external corporate secretarial firm's clients, these clients will be the clients of the solicitor's law practice as well, even if they do not directly pay the fee to the solicitor for his/her services, but to the external corporate secretarial firm who then pays the solicitor. This is because acting as a company secretary for an external corporate secretarial firm's clients in exchange for consideration amounts to the practice of law and can only be effected through a proper practice structure. This is contemplated by sections 25(1)(*a*)–25(1)(*e*) of the LPA which provides that every solicitor must, before he/she does any act in the capacity of an advocate and solicitor, apply for a practising certificate, such application to be accompanied by evidence of the practice structure in which he/she will be practising. Sections 26(1)(*a*)–26(1)(*h*) of the LPA also prohibits any advocate and solicitor from applying for a practising certificate unless he/she practises or intends to practise in a proper practice structure.

Hence, any services that the solicitor renders as a company secretary in exchange for consideration should be effected through his/her law practice to avoid circumventing the requirements of the LPA, the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed), the Legal Profession (Professional Indemnity Insurance) Rules (Cap 161, R 11, 2002 Rev Ed) and the Society's Practice Directions. It follows that the solicitor should obtain prior approval from his/her law practice if he/she is acting as a company secretary for an external corporate secretarial firm's clients in his/her capacity as an advocate and solicitor in exchange for consideration.

In addition, if it is the external corporate secretarial firm which engages the solicitor and pays the fee to the solicitor for his/her services as a company secretary, the firm will also be a client of the solicitor's law practice. This is because section 2(1) of the Act defines "client" as a "person who, as a principal or on behalf of another ... has power, express or implied, to retain or employ ... a solicitor, a law corporation or a limited liability law partnership" for non-contentious business. For the reasons mentioned above, the external corporate secretarial firm cannot engage a solicitor as a company secretary independently of his/her law practice.

In light of the above, issues of conflict of interest, both concurrent and successive, could potentially arise between the law practice and the external corporate secretarial firm itself and/or its clients and it is for the law practice to manage such conflicts. For concurrent conflicts of interest, the solicitor should be mindful of his/her general professional ethical obligations, including rules 11, 20, 21 and 22 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015').

For successive conflicts of interest, the law practice may be precluded from acting against an external corporate secretarial firm and/or its clients in the future under rule 21 of the PCR 2015 and the general law. As a matter of good practice, the law practice should address specifically in the letter of appointment how it can act against an external corporate secretarial firm and/or its clients in the future.

From a professional indemnity angle, the professional indemnity policy covering the law practice which the solicitor is in will extend to the solicitor's services as a company secretary only if the services are provided by him/her through, and as part and parcel of, his/her law practice. It follows that the professional indemnity policy will not cover the solicitor's work as a company secretary if the work is provided outside, or independently, of his/her law practice.

C. Solicitors Doubling or Acting as Housing Agent
[Formerly RUL/1/1994]

It is not only a tradition but an article of faith of the Bar that the honour and dignity of the profession should at all times be maintained.

In the view of the Council carrying on the business of a housing agent in tandem with that of a lawyer would not be compatible.

Section 83(2)(*i*) of the LPA, which deals with the disciplining of members of the Bar, states that a solicitor may be struck off or suspended for cause if he/she carries on by himself/herself or any person in his/her employment any trade, business or calling that detracts from the profession of law or in any way incompatible with it, or is employment in any such trade, business or calling.

The calling of a housing agent, "broker" in common parlance, would detract from the honour and dignity of the Bar. The Council is therefore of the opinion that the business of a housing agent is incompatible with that of a solicitor.

D. Solicitors Doubling or Acting as Estate Agents
[Formerly Council's Practice Direction 2 of 2010]

If in the course of the practice of the solicitor, the opportunity arose for the solicitor to make an agreement with a prospective vendor or purchaser that the solicitor would be paid a commission as a finder's fee if the solicitor could secure a purchaser or vendor (as the case might be), to "broker" a deal in such circumstances would not necessarily detract from the honour and dignity of the Bar and the solicitor was not prohibited from doing so (the 'Amended Rule').

The Council is of the view that the Amended Rule remains applicable after the enactment of the Estate Agents Act 2010 (Cap 95A, 2011 Rev Ed) ('EAA'), as section 4 of the EAA provides that the EAA does not apply to anything done:

> "(*b*) by a solicitor, in the course of practising his profession, or by any person employed by him and acting in furtherance of that course, in introducing to the client, third persons who wish to acquire or dispose of a property (whether for remuneration or otherwise),

if the solicitor and any person employed by him do not perform any other work that falls within the definition of "estate agency work" in section 3 …"

Under section 3(1) of the EAA, an "estate agent", subject to section 3(3), "means a person who does estate agency work, whether or not he carries on that or any other business". The term "estate agency work", subject to section 3(3), means:

> "any work done in the course of business for a client or any work done for or in expectation of any fee (whether or not in the course of business) for a client —
>
> *a*) being work done in relation to the introduction to the client of a third person who wishes to acquire or dispose of a property, or to the negotiation for the acquisition or disposition of a property by the client; or
>
> *b*) being work done, after the introduction to the client of a third person who wishes to acquire or dispose of a property or the negotiation for the acquisition or disposition of a property by the client, in relation to the acquisition or disposition, as the case may be, of the property by the client."

The solicitor must nevertheless at all times observe the following qualifications to the Amended Rule:

(a) where, in addition to securing the purchaser or the vendor (as the case may be), the solicitor goes further to act in the conveyancing transaction, the solicitor will not be entitled to the benefit of the Amended Rule, which will no longer apply, and the solicitor must comply strictly with the Legal Profession (Solicitors' Remuneration) Order (Cap 161, O1, 2010 Rev Ed); and

(b) the Amended Rule is not meant to permit and is not to be read as permitting a solicitor to be an estate agent (as defined in section 3(1) of the EAA) in tandem with his law practice. To be an estate agent in tandem with being a solicitor continues to be prohibited.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.9.1

[Formerly PDR 2013, para 1; PDR 1989, chap 1, para 4]

APPLICATIONS FOR PRACTICE TRAINEES TO APPEAR BEFORE A JUDGE OR REGISTRAR

Members' attention is drawn to section 32(3) of the Legal Profession Act (Cap 161, 2009 Rev Ed) where an advocate and solicitor (as described by the Act) who is qualified to practise under Parts IIA and IVA of the Act may apply to allow a qualified person who has satisfied the requirements under the section to have limited right of appearance before a judge or registrar.

Former Chief Justice, Wee Chong Jin, has commented that it is a discourtesy for petitioners who apply for their pupils (now known as practice trainees) to appear in chambers not to attend on their applications, or if they are unable to attend for good reasons that a sufficiently senior colleague should attend.

Justice Choo Han Teck reinforced this point in *Re Ang Jian Xiang and Others* [2016] SGHC 92, where he stated:

> "When counsel is late for court it is a mark of disrespect, not for the individual judge as a person, but to the court as representing a legal institution. Unpunctuality in such applications [for practice trainees] also impart the wrong lesson that the court can be kept waiting."

Members of the Bar are reminded that whenever possible the supervising solicitor of a practice trainee should appear on these applications and if he is not able, then a senior colleague should attend.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.9.2

[Formerly PDR 2013, para 84; PDR 1989, chap 7, para 8(b)]

RESPONSIBILITIES IN SUPERVISING PRACTICE TRAINEE

The Council had been informed of a pupil (now known as practice trainee) who purported to appear on a watching brief for an insurance company in a Coroners Inquiry. During the Inquiry, the pupil was invited on two occasions to ask questions but declined each time without informing the court that he had not yet been called to the Bar. The Council wishes to remind members of their responsibilities in supervising their practice trainees.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.9.1

PRACTICE TRAINING AND RELEVANT LEGAL TRAINING

1. This Guidance Note sets out the guidelines for law practices concerning the contracts for practice training and for relevant legal training ('Contracts').

A. Content of the Contracts
[Formerly GN 2013, para 8; Council's Guidance Note 3 of 2010]

2. Under the previous pupillage system, pupils (now known as practice trainees) were not considered employees of the law practices which trained them. The introduction of the new practice training contract regime in 2009 is not intended to be conceptually different from the pupillage system in this aspect.

3. Accordingly, based on discussions with the CPF Board and the Ministry of Manpower, a law practice should ensure that its practice training contract observes the following guidelines, so as to maintain the status of practice trainees as non-employees:

(a) The practice training contract should make it clear, in letter and in spirit that it is only for the training of the practice trainee in accordance with the relevant legislation.

(b) A standard clause should be incorporated in all practice training contracts as follows:

> *"This practice training contract is governed by the Legal Profession Act and the rules made thereunder. The duties and obligations of the Singapore law practice under this contract are prescribed by the Act, rules and guidelines issued thereto. The practice trainee shall perform his or her duties and obligations in accordance with the rules and guidelines."*

(c) The other clauses in the practice training contract should not, either in letter or in spirit, contradict the standard clause in paragraph 3(b) above. There should also be no derogation of the standard clause in other parts of the practice training contract. In particular, apart from the payment of any honorarium, there should be no provision of specific benefits to the practice trainee in the practice training contract. Clauses which suggest that the practice trainee is an employee of the law practice, such as provisions for specific working hours, the right to terminate the contract and the duty of the law practice to exercise effective supervision over its employees, should also be avoided.

(d) The use of the term 'allowance' or 'remuneration' should be avoided in the practice training contract. Instead, the word 'honorarium' should be used.

(e) The practice training contract should not state that the law practice will 'assign work, supervise and guide your work' or words to this effect. Instead, it should state that the law practice will 'give training assignments and supervise training', and that there will be a supervising legal practitioner.

B. Honorarium to be Paid under the Contracts
[Formerly GN 2014, para 1]

4. In determining the amount of honorarium to be paid under practice training contracts, a law practice should at a minimum, take into account the practice trainee's direct and basic expenses reasonably incurred in the course of carrying out his/her day-to-day duties under the practice training contract, such as transport and meals.

5. For the avoidance of doubt, such honorarium need not cover ancillary or indirect costs such as call papers, bar exams or the practice trainee's opportunity costs associated with taking up the practice training contract.

6. Nevertheless, there is no prohibition for a law practice to incentivise its practice trainee to subsequently enter into an employment contract as a qualified legal practitioner with the law practice upon the completion of his/her practice training contract and attainment of the required qualifications by the payment of a lump sum bonus under the employment contract. The lump sum bonus may be expressly designed to cover other costs incurred by the practice trainee during his/her practice training contracts which may not have been covered by the honorarium.

C. Arrangements for Contracts
[Formerly GN 2013, para 11]

7. Part C of the Guidance Note is in relation to an agreement, whether in writing or otherwise ('Agreement') which a person ('Trainee') enters into with a law practice:

(a) to serve his/her practice training period under a practice training contract (whether or not the practice training contract has been registered with the Singapore Institute of Legal Education or any other body or authority); or

(b) to undergo relevant legal training in order to become a qualified person.

8. Based on feedback from some law practices, there have been situations where a Trainee does not join a particular law practice despite having entered into an Agreement with that law practice. There may be various reasons why a Trainee may not join a particular law practice – *eg*, the Trainee may wish to join the legal service, or another law practice, or may decide on a different career altogether.

9. In the situation where a Trainee does not wish to join a particular law practice ('First-mentioned Law Practice') because he/she intends to join another law practice ('Second-mentioned Law Practice'), that Trainee may have already entered into an Agreement with the First-mentioned Law Practice.

10. This part of the Guidance Note is designed to reflect appropriate conduct by the parties to an Agreement in the situation where a Trainee, having entered into an Agreement with a law practice, intends to enter into another Agreement with another law practice.

11. The parties to an Agreement should be aware of the following:

(a) If a Trainee enters into an Agreement with a law practice but subsequently does not wish to join that law practice, it is only common courtesy to inform the law practice as soon as practicable that he/she will not be joining the law practice.

(b) Based on an Agreement that a Trainee has entered into with a law practice, that law practice is likely to have committed resources for purposes of the practice training or

relevant legal training for that Trainee and it may have turned down other applicants for practice training or relevant legal training.

(c) It would not be advisable or appropriate for a Trainee to enter into an Agreement with more than one law practice solely for the purpose of securing options to pick and choose which law practice to join.

12. The Society does not express a view on the validity of an Agreement and this Guidance Note does not affect the legal rights of the parties to an Agreement.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.10.1

[Formerly GN 2013, para 7; Council's Guidance Note 1 of 2010]

APPLICATION FOR PRACTISING CERTIFICATE WHEN SECTION 25A OF THE LEGAL PROFESSION ACT APPLIES

1. This Guidance Note sets out the procedure to be followed in an application for a practising certificate when section 25A of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') applies.

2. Section 25A(1) of the LPA provides as follows:

> *"This section shall apply to any solicitor –*
>
> *(a) whose suspension from practice has expired;*
>
> *(b) who has been discharged from bankruptcy;*
>
> *(c) who has been sentenced to a term of imprisonment in any civil or criminal proceedings in Singapore or elsewhere;*
>
> *(d) who has been convicted of an offence involving dishonesty or fraud;*
>
> *(e) who has been convicted of an offence in relation to his conduct in his practice of law;*
>
> *(f) who has been found guilty of misconduct in any other professional capacity;*
>
> *(fa) whose fitness to practise has been determined under section 25C to be impaired by reason of his physical or mental condition, or who, having been ordered by a Judge to submit to a medical examination under section 25C to be conducted within such period as the Judge may specify in the order, fails to do so;*
>
> *(g) whom the Attorney-General or the Council is satisfied is incapacitated by illness or accident, or by the solicitor's physical or mental condition, to such extent as to be unable to attend to his practice; or*
>
> *(h) whom the Attorney-General or the Council is satisfied has failed to comply with any of the rules made under section 72 or any of the rules made under section 73D of the Conveyancing and Law of Property Act (Cap 61)."*

3. Where a solicitor (as defined by the Act) to whom section 25A of the LPA applies, makes an application for a practising certificate in respect of a practice year, the Attorney-General or the Council may request the Registrar, pursuant to section 25A(2) of the LPA, to refuse the application for a practising certificate, or to issue a practising certificate to the solicitor subject to such conditions as the Attorney-General or the Council may specify.

4. A practice year is the period from 1st April in any calendar year to 31st March in the next ensuing calendar year. Pursuant to rule 3 of the Legal Profession (Practising Certificate) Rules (Cap 161, R 6, 2010 Rev Ed), an application for a practising certificate in respect of a practice year may be submitted only from 1st March (preceding that practice year) onwards.

5. In applying for a practising certificate, a solicitor must first apply to the Society for approval to e-file that application for a practising certificate. The application for approval to e-file that is submitted to the Society must be accompanied by payment of the annual subscription and contribution to the Compensation Fund, and the accountant's report(s) (if any).

6. When section 25A of the LPA applies, the Council will, upon receipt of the application for approval to e-file, determine whether to make an application to the Registrar pursuant to section 25A(2) of the LPA. The Society will write to the Attorney-General's Chambers to enquire if they intend to make an application pursuant to section 25A(2) of the LPA.

7. The Society will subsequently write to inform the Registrar whether the Council or the Attorney-General's Chambers will be making an application under section 25A(2) of the Act. The solicitor concerned may proceed to e-file his application for a practising certificate only after the Society has written to inform the Registrar of the position of the Council and the Attorney-General's Chambers.

8. To expedite the process of e-filing an application for a practising certificate for the commencement of the practice year, a solicitor to whom section 25A of the LPA applies, is to submit to the Society a 'Notice of Intention to Apply for a Practising Certificate' no later than 15 February (preceding the practice year) to confirm that he/she will be applying for a practising certificate. The form of the 'Notice of Intention to Apply for a Practising Certificate' can be found in **Annex A** of this Practice Direction.

9. The solicitor concerned will still be required to submit to the Society, from 1 March (preceding the practice year) onwards, an application for approval to e-file. However, the Council will, upon receipt of the 'Notice of Intention to Apply for a Practising Certificate', determine whether to make an application under section 25A(2) of the LPA and the Society will write to the Attorney-General's Chambers to enquire if they intend to make an application pursuant to section 25A(2) of the LPA.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

Annex A: Notice of Intention to Apply for a Practising Certificate

THE LAW SOCIETY OF SINGAPORE

NOTICE OF INTENTION TO APPLY FOR A PRACTISING CERTIFICATE

Name: _____ Admission No: _____

Office Address: _____

Office Contact Number: _____

Residential Address: _____

Residential Contact Number: _____ Mobile No: _____

1. I intend to apply for a practising certificate for the practice year _____ (*for example, 2018/2019 – 1 April 2018 to 31 March 2019*).

2. Section 25A of the Legal Profession Act applies to me because of the following (please tick whichever applicable):

   - ☐ I have been suspended from practice and the period of suspension has expired
   - ☐ I have been discharged from bankruptcy
   - ☐ I have been sentenced to a term of imprisonment in civil or criminal proceedings in Singapore or elsewhere
   - ☐ I have been convicted of an offence involving dishonesty or fraud
   - ☐ I have been convicted of an offence in relation to my conduct in my practice of law
   - ☐ I have been found guilty of misconduct in another professional capacity
   - ☐ My fitness to practise has been determined under section 25C to be impaired by reason of my physical or mental condition, or, having been ordered by a Judge to submit to a medical examination under section 25C to be conducted within such period as the Judge may specify in the order, I failed to do so
   - ☐ The Attorney-General or the Council is satisfied that I am incapacitated by illness or accident, or by my physical or mental condition, to such extent as to be unable to attend to my practice
   - ☐ The Attorney-General or the Council is satisfied that I have failed to comply with the rules made under section 72 of the Legal Profession Act or the rules made under section 73D of the Conveyancing and Law of Property Act.

Particulars of the above are set out as follows:

_____

_____

_____

I hereby confirm and declare that the information stated in this Notice of Intention to Apply for a Practising Certificate is true, correct and complete.

_____ _____

Signature of solicitor Date

This form is to be submitted to –

Compliance Department
The Law Society of Singapore
39 South Bridge Road
Singapore 058673

This Notice of Intention to Apply for a Practising Certificate may be hand-delivered, sent by post, emailed to compliance@lawsoc.org.sg or faxed to (65) 6533 5700.

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.10.2

[Formerly GN 2013, para 6; Council's Guidance Note 2 of 2009]

REPLACEMENT ON ROLL OF SOLICITOR WHO HAS BEEN STRUCK OFF

1. Under section 102(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA'), the court may, if it thinks fit, order the Registrar to replace on the roll the name of a solicitor (as defined by the Act) who has been removed from, or struck off, the roll.

2. Sections 102(2) and 102(3) of the LPA provide for the procedure to be complied with for an application for replacement on the roll. The application is to be made by originating summons supported by an affidavit. The originating summons is to be served on the Society who shall appear before the hearing and place before the court a report which shall include copies of the record of the proceedings leading to the solicitor being struck off the roll and a statement of the facts that have occurred since the solicitor was removed/struck off the roll which in the opinion of Council or any member of the Council are relevant to be considered or to be investigated in connection with the application.

3. The LPA does not provide for any specific information that needs to be disclosed by the applicant for the purpose of the application and in order for the court to determine if he/she is fully rehabilitated to practice and should be replaced on the roll as a matter of public interest and public confidence in the legal profession.

4. This has led the court in *Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapor*e [2009] 4 SLR(R) 1018, to observe that it was good practice to make full disclosure of all relevant information in all future applications for replacement on the roll. This was to remind the applicant of the need to furnish all relevant information in his/her application.

5. The Council of the Law Society in consultation with the Attorney-General, sets out in paragraph 6 below the information that ought to be disclosed in an affidavit in support of an application for replacement on the roll under section 102 of the LPA. This is to bring to the attention of the court information pertaining to the grounds for disqualification as prescribed under the LPA.

6. In particular, the affidavit should contain, amongst other things, disclosure of the following:

(a) if there was/were any pending disciplinary or other criminal or civil action(s) or matter(s) including regulatory action(s) against the applicant in any jurisdiction at the time of the removal/striking off and the outcome (if any) including but not limited to any conviction or sentence to imprisonment;

(b) if there was/were any subsequent disciplinary or other criminal or civil action(s) matter(s) including regulatory action(s) against the applicant in any jurisdiction after the removal/striking off and the outcome (if any) including but not limited to any conviction or sentence to imprisonment;

(c) if the applicant is an undischarged bankrupt in any jurisdiction;

(d) if the applicant has entered into a composition with his/her creditors or a deed of arrangement for the benefit of his/her creditors in any jurisdiction;

(e) if the applicant has one or more outstanding judgments against him/her in any jurisdiction amounting in the aggregate to $100,000 or more which he/she has been unable to satisfy within six months from the date of the earliest judgment;

(f) if the applicant has been found under any relevant legislation including the Mental Capacity Act (Cap 177A, 2010 Rev Ed) to be of unsound mind, suffering from mental disorder, lacking capacity and/or incapable of managing himself/herself and/or his/her affairs;

(g) if the referees opining to the applicant's fitness to practice and rehabilitation are known to the applicant in an official and/or professional capacity;

(h) if the applicant is incapacitated by illness or accident or physical or mental condition which is relevant to his/her capacity to attend to his/her practice;

(i) if the applicant's right to practice in any other jurisdiction is subject to any restriction(s), condition(s), suspension or has been stopped; and

(j) if the period that has transpired between the date the applicant ceased practice to the date of the application.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.11.1

[Formerly PDR 2013, para 100; PDR 1989, chap 7, para 34]

SIGNING THE NAME OF THE LAW PRACTICE

Generally, only a practising solicitor may sign the name of the law practice in a professional communication. However, an unauthorised person can sign on behalf of a law practice so long as he/she does not sign in the name of the law practice.

For instance, there is nothing improper for the manager, accountant or cashier of a law practice to sign a letter or document on behalf of the law practice provided he/she uses his/her own name and gives his/her proper designation. This practice extends to the issuance of a law practice's accounting receipts.

Members are reminded that, under rule 32 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015), they are to exercise proper supervision over staff working under them in the law practice.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.11.2

[Formerly PDR 2013, para 24; PDR 1989, chap 1, para 21]

WORK DONE BY AN UNAUTHORISED PERSON

A solicitor (as defined by the Act) should not assist unauthorised persons to commit a breach of section 33 of the Legal Profession Act (Cap 161, 2009 Rev Ed) by merely signing or 'lending his name' to documents prepared by such unauthorised persons, including but not limited to documents relating to the incorporation or formation of companies.

Members are also reminded that, under rule 32 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015), they are to exercise proper supervision over staff (which may include unauthorised persons) working under them in the law practice.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.12.1

[Formerly PDR 2013, para 46; Council's Practice Direction 1 of 1999]

STORAGE AND DESTRUCTION OF DOCUMENTS

This Practice Direction supersedes the Law Society's Practice Direction & Rulings 1989, para 41.

A. Return of Documents and Storage of Files

It is advisable to return to clients all documents that belong to them once the retainer is terminated, subject to such rights as may arise by reason of the legal practitioner's lien.

In addition, members may as a matter of prudence, wish to advise clients in writing immediately prior to a file being sent to storage:

(a) of the intended storage of the files;

(b) that clients should notify their legal practitioners concerned if they require any documents in the file, prior to despatch of the files to storage; and

(c) that the files will in due course be destroyed.

B. Retention Period of Closed Files

The Law Society is unable to specify fixed periods of retention for individual files. However, the following are relevant considerations for determining retention periods.

(i) General considerations

(a) As a general rule, the Law Society considers it advisable for members to retain all files for a minimum of six years from the time when the subject matter is wholly completed.

(b) At the end of this period, members should review the files again according to the nature of the particular transactions, and the likelihood of any claims arising to decide if further retention is appropriate.

(c) It is acceptable for members to agree a shorter storage period (followed by destruction of the files) with their clients. However members must carefully consider the implications in each case, arising from the specific considerations outlined below.

(ii) Specific considerations

(a) In cases where a party was under a disability at the time of the action or where judgment for provisional damages has been obtained, files should be retained for a minimum period of six years from the date on which the client would have a cause of action or final judgment has been obtained.

Members should also take into account the relevant statutory provisions, some examples of which are set out below:

(1) Section 24A of the Limitation Act (Cap 163, 1996 Rev Ed) allows actions in negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision) within six years from the date from when the cause of action accrued or three years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such action, if that period expires later than the period mentioned in section 24A(3)(*a*), whichever is later, subject to an overriding time limit of 15 years under section 24B.

(2) Section 46 of the Goods and Services Tax Act (Cap 117A, 2005 Rev Ed) requires tax related records relating to a prescribed accounting period ending on or after 1st January 2007 to be kept for not less than five years from the end of the prescribed accounting period, subject to the Comptroller agreeing to a shorter period.

(3) Section 67 of the Income Tax Act (Cap 134, 2014 Rev Ed) requires records and receipts to which income relates to be kept for five years from the relevant year of assessment.

(4) Section 199 of the Companies Act (Cap 50, 2006 Rev Ed) requires accounting and other records that explain the transactions and financial position of the company to be retained by the company for five years from the end of the financial year in which the transactions or operations to which those records relate are completed.

(b) Members should retain conveyancing files for six years from completion of the relevant transaction.

C. Destruction of Documents

Documents, in particular, original documents, such as agreements, deeds, guarantees and certificates, *etc*, should not be destroyed without the prior consent of the owner of that document.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.12.1

[Formerly GN 2013, para 3; Council's Guidance Note 1 of 2006]

STORAGE OF DOCUMENTS IN ELECTRONIC FORM

1. This Guidance Note supplements the Practice Direction of Council on "Storage and Destruction of Documents" which dealt with matters such as the period of retention of documents ('Practice Direction 3.12.1'). The Guidance Note sets out in an answer and question format general guidelines to be considered when law practices decide to store their documents in electronic form.

2. This Guidance Note does not lay down any rigid form or style on how the electronic documents should be stored and in what medium they should be stored.

A. Should I Keep All Clients Documents?

3. The return to clients of documents that belong to them should not be left to be dealt with only upon the termination of the retainer. It is prudent to periodically review and arrange for the return of clients' documents on a regular basis or when the documents are no longer required.

4. All clients must be briefed on the procedure for the storage, return or destruction of documents at the commencement of the retainer or it should be stated in the letter of engagement.

B. Can I Store Documents Photographically or Electronically and Destroy the Originals?

5. All original documents of a client should not be destroyed without the express written permission of the client or owner.

6. Where the retainer has been completed, bill paid, and the client does not wish to have the file returned a law practice may store it on a data storage medium or device (such as a disc or storage drive) and then destroy it per the Practice Direction 3.12.1.

7. When in doubt whether to destroy any document, the client's or owner's written permission should always be sought. If it is not possible to obtain such permission you will have to form a view and evaluate the risk. When seeking the client's or owners' permission to store data electronically and destroy documents, you may wish to reserve the right to make a reasonable charge for preparing copies if they are later requested.

C. What Procedures would be Recommended for the Storage of Original Documents in Electronic or Photographic Formats and then the Originals are Destroyed?

8. The Law Society recommends that a law practice considers the terms of the Evidence Act (Cap 97, 1997 Rev Ed) and the following guidelines before the destruction of the originals:

(a) Written evidence of the destruction of the original and of identification of the copy must always be preserved in case oral evidence is no longer available when needed.

(b) There should be a proper system for:
  (i) identification of each file or document destroyed;

(ii) recording that the complete file or document, as the case may be, has been photographed or stored;
(iii) recording identification by the camera operator of the negatives as copies of the documents photographed or file and format the electronic filed will be stored in; and
(iv) preserving and indexing the negatives or the file.

D. What Procedures should be Adopted for the Storage of Photographically or Electronically Stored Documents?

9. The Law Society recommends that the following guidelines be considered when planning for the storage of photographically or electronically stored documents:

(a) records retained/captured in electronic form must be accurate to ensure it is not lost or altered in any way;

(b) the electronic storage system must have an audit trail to capture all transactions on the said system completely;

(c) the electronic storage system must not allow for editing/alteration/deletion of stored electronic records/images;

(d) there must be reasonable image and data security, backup and recovery measures to ensure that the electronic record/image and other data associated to it can be retrieved;

(e) there must be checks/validation to ensure that the indexing of electronic data/images is accurate;

(f) electronic records/images must remain retrievable in the event of a change/upgrade of IT systems or vendors;

(g) there must be precautions in place to prevent unauthorised changes and modifications;

(h) the electronic storage system must be able to provide for complete display and printing of all information associated with an electronic record/image; and

(i) there must be internal controls adequate to ensure reliability, integrity, accuracy, completeness and availability of the electronic storage system.

E. Outsourcing of Storage Systems

10. Before commencing on outsourcing, the following risks of outsourcing electronic storage systems should be considered and evaluated:

(a) due diligence should be carried out to determine an outsourcer's viability, capability, reputation, track record and financial strength;

(b) all outsourcing arrangements be appropriately documented by means of a written outsourcing agreement;

(c) confidentiality of client information must be protected by entering into non-disclosure agreements or confidentiality clauses and using outsource partners in jurisdictions that generally uphold such agreements and clauses;

(d) outsourcing agreements must be terminable in the event that the outsourcing partner:
    (i) goes into liquidation, receivership or judicial management, becomes insolvent, or undergoes change in ownership;
    (ii) has breached confidentiality; or
    (iii) has demonstrated deterioration in the ability to safeguard confidentiality of customer information.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.13.1

[Formerly PDR 2013, para 92]

CAPITAL ALLOWANCES AND DEDUCTIONS ON LAW BOOKS

A. Capital Allowances on Legal Practitioner's Library

[Formerly PDR 1989, chap 7, para 20]

On representations made by the Law Society, members are informed that the Commissioner of Inland Revenue has confirmed that law books of legal practitioners are regarded as 'plant' and capital allowances are claimable on them following *Munby v Furlong* [1977] 2 All ER 953. Such capital allowance can be claimed under section 19 or 19A of the Income Tax Act (Cap 134, 2014 Rev Ed).

With regard to periodicals and journals, the present practice of recognising them as revenue expenditures will continue. Expenditure incurred in purchasing replacement volumes and editions may also be treated as revenue expenditure provided that the replaced volumes and editions have not been granted capital allowances.

B. Deduction from Income Tax on Purchase of Law Books

[Formerly PDR 1989, chap 7, para 21]

It was stated that deduction from income tax was allowed in the case of replacement of law books, but not for the purchase of new law books, under section 14(1)(*c*) of the Income Tax Act (Cap 134, 2014 Rev Ed) provided that the cost or replacement has not been claimed as capital allowances under sections 19 or 19A.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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).[1] 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.[2]

(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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[1] See Rule 4(4) of the Rules.
[2] 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

Definitions in Section 70I of the Act	
claimant	Means any person who claims to be entitled to, or to be authorised to receive, any transferred unclaimed client money. (Note: A claimant **does not** 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.

Definitions in Rule 2 of the UMF Rules	
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	Has the meaning given by rule 2(1) of the Legal Profession (Solicitors' Accounts) Rules, i.e. means (a) a current or deposit account maintained in the name of a solicitor at a bank; or (b) a deposit account maintained in the name of a solicitor with an approved finance company, in the title of which account the word "client" appears.
excluded transaction	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.
identifying particulars	(a) in relation to an individual – means his or her: - full name (including any alias); - personal identification number (such as NRIC number, passport number or foreign identification number); - nationality; - residential address; and - telephone number (b) in relation to a body corporate or unincorporate – means its: - name; - address of its place of business or registered office; - telephone number; - date and place of its registration or incorporation; and - Unique Entity Number (UEN).
responsible officer	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.
Society's website	Means the website at https://www.lawsociety.org.sg.

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THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.15.1

USE OF E-MAIL CORRESPONDENCE

Explanatory Note

In order to comply with Covid-19 safety measures introduced in 2020, numerous businesses, including law practices, were required to adapt their operations to allow employees to work from home.

It is expected that work from home and telecommuting arrangements may be more commonplace among law practices in the long term, even as work returns to normal.

In light of the changing work landscape, the Information Technology Committee of the Law Society of Singapore encourages law practices to use e-mail correspondence as the default mode of communication in place of other modes of remote communication like the telefax.

This Guidance Note is issued to assist law practices and legal practitioners in adopting good practices when communicating with each other through e-mail correspondence. It should be read together with other Practice Directions and Guidance Notes issued by the Council of the Law Society of Singapore on the use of e-mail correspondence.

For the avoidance of doubt, it is not intended that departure from the recommendations in this Guidance Note should have disciplinary consequences for legal practitioners.

Guidance

1. This Guidance Note applies to e-mail correspondence between legal practitioners but excludes text or instant messages (like SMS, WhatsApp, WeChat, Skype, iMessage, FaceTime and similar messaging services).

2. Every legal practitioner is strongly encouraged to have, and be contactable at, a valid and active e-mail address, in order to receive e-mail correspondence (a "Practitioner E-mail Address", or "PEA"). A legal practitioner's PEA may be individual or shared within his or her practice.

3. Every legal practitioner is strongly encouraged to take reasonable measures to ensure that his or her PEA is operational at all times, and checked for incoming e-mail (which should be opened and read) at reasonably regular intervals apart from the Excluded Period defined as follows :-

> "Excluded Period" means the period between 1700 hrs (Singapore time) on any given day and 0859 hrs (Singapore time) on the following working day. For the avoidance of doubt, the term "working day" excludes Saturdays, Sundays and all gazetted Singapore public holidays, as well as such periods in respect of which a legal practitioner has officially notified the Law Society of Singapore and/or the sender legal practitioner that his or her office (if a sole proprietor) and/or his or her practice will be closed.

4. For the avoidance of doubt, the period during which a legal practitioner has activated his or her "out-of-office" notification is not an Excluded Period.

5. A legal practitioner sending e-mail correspondence to another legal practitioner should be mindful that the e-mail correspondence may not be opened, read or acted upon during the Excluded Period, or during periods when recipient legal practitioners have activated their "out-of-office" notifications. If the contents of any e-mail correspondence require urgent action on the part of the recipient legal practitioner or his or her client, the sender legal practitioner should make reasonable efforts to contact the recipient legal practitioner (otherwise than by e-mail correspondence) to alert him or her to the fact that urgent e-mail correspondence has been sent to him or her.

6. A legal practitioner's PEA should be clearly stated:

a. within all e-mail correspondence (e.g. in the "Sender" / "From" section) issued by that legal practitioner, together with the legal practitioner's name (which may appear elsewhere e.g. in the signature section); and

b. within the letterhead or any other prominent part of paper-based correspondence issued by that legal practitioner.

7. Legal practitioners are strongly encouraged to use e-mail correspondence as a primary means of correspondence. A law practice can decide not to maintain any facsimile system or service as part of its normal office operations.

8. Legal practitioners are strongly encouraged to send e-mail correspondence containing all of the elements in the sample e-mail at Annex A, in order to take full advantage of communicating electronically.

9. Nothing in this Guidance Note is intended to affect any written law regulating the deemed service of documents or court timelines, including without limitation, the provisions of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) or practice directions issued by the Courts.

Date: 15 February 2021

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

ANNEX A: SAMPLE E-MAIL

	Comments / Useful Features
From : Allan Partridge <allan@partridgepeartreellc.com>	This is the sender.
To : Jane Leong <jane@blueorchidlaw.com>; Nur Shuhadah Binte Ali <shuhadah@blueorchidlaw.com>; Kumar Singam <kumar@blueorchidlaw.com>	The e-mail is sent (or copied) to the relevant legal practitioners in the other firm, acting on the matter. This way, these legal practitioners will all receive the e-mail at the same time and can act on it. Distribution lists may be used where appropriate.
CC : Vivien Singh <vivien@partridgepeartreellc.com>; Sam Ng <sam@partridgepeartreellc.com>; Edward Tan <ADMIN_edward@partridgepeartreellc.com>; Piper Teo <ADMIN_piper@partridgepeartreellc.com>	When a legal practitioner receives an e-mail from another legal practitioner with multiple parties in copy, he or she may choose to reply to all, as the sending legal practitioner may have done so to include colleagues or secretaries involved in the matter. However, it is not obligatory to do so. Distribution lists may be used where appropriate.
SUBJECT : HC/S 999/2018 - Exchange of AEICs	The subject line should never be left blank as the e-mail may be regarded as junk mail or spam. The subject line contains an identifying phrase that all law firms involved can use, e.g. “HC/S 999/2018”, a matter/project reference, for example, "Project SunBeam", or the subject matter of the present correspondence. Additional reference codes can be appended to the subject

	line by e-mail or document management systems of the practices.
Your Ref : JL/SA/KS/267935 Our Ref : AP/VS/SN/2189999 Dear Jane Thank you for your e-mail dated 12 June 2018. I agree to exchange AEICs via e-mail at 4pm on 30 June 2018. Please send them to me and my colleagues (copied in this e-mail). Kind regards, Allan	Generally, the message should be in the body of the e-mail (making it more easily readable on mobile devices), and not in an attachment. However, if the contents of the message are confidential or sensitive or are more appropriately set out in an attachment, the sender may choose to set out the message in an attached document (e.g. a letter in PDF), which can in appropriate cases be encrypted or password protected. Legal practitioners should also take note of : (a) Practice Direction 8.5.9 on Relations with Other Legal Practitioners (dated 31 January 2019); and (b) Practice Direction 8.3.2 on Quoting of References in Correspondence (dated 31 January 2019).
Allan Partridge SC **Partridge & Peartree LLC**, Advocates & Solicitors 999 Marina Ten #88-08, Singapore 999888 Tel +65 6747 0000 Direct Line +65 6747 0001 Mobile No +65 8888 7777 *www.partridgepeartreellc.com* Incorporated in Singapore with limited liability (Registration No. 201510230D)	The sender's e-mail signature shows his or her full name, as well as his or her firm's name, firm UEN, limited liability status (if an LLP or an LLC), address and contact details. A direct line and/or mobile number may be included, at the sender's discretion.

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 4.1.1

[Formerly PDR 2013, para 25; PDR 1989, chap 1, para 22]

BREACH OF UNDERTAKING IN ADMIRALTY PROCEEDINGS

The increasing frequency with which undertakings given by legal practitioners on the basis of which vessels are arrested and detained in admiralty proceedings and security guard's expenses incurred have not been honoured has been brought to the Council's attention by the Sheriff, Supreme Court, Singapore.

A legal practitioner should not give an undertaking which he/she is unable to implement personally. It would be easy for the Sheriff to institute proceedings to enforce the undertakings. Apart from being exposed to legal proceedings, legal practitioners should also bear in mind that a breach of undertaking is a serious breach of professional conduct sufficient to warrant disciplinary proceedings.

Legal practitioners are therefore requested to ensure that sufficient funds are placed at their disposal to cover security guard's expenses before giving such undertakings. Failure to do so will mean that the legal practitioner must honour the undertaking personally and failing that, face the consequence of not only being sued by the Sheriff but also having to answer for professional misconduct.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 4.3.1

[Formerly PDR 2013, para 48]

PROCEDURE TO VISIT AND INTERVIEW CLIENTS IN PRISONS

A. Visit to Prisons and Rehabilitation Centres

[Formerly PDR 1989, chap 1, para 43]

Members of the Bar who visit their clients who are serving sentences in a prison or undergoing treatment in a rehabilitation centre should access the Singapore Prison Service's website for the procedure to book their interview time with inmates (*https://www.ipris.sps.gov.sg/sps-vms3-web/#/home/index*).

B. Requests by Lawyers to Interview Prisoners

[Formerly PDR 1989, chap 1, para 44]

A consistent set of visit instructions can be found on the Singapore Prisons Internet concerning visits request (*http://www.sps.gov.sg/connect-us/lawyers*).

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 4.5.1

[Formerly PDR 2013, para 49; Council's Practice Direction 3 of 2012]

PAYMENT OF CHEQUES BY DEFENDANT INSURER TO PLAINTIFF FOR MOTOR ACCIDENT CLAIMS

This Practice Direction sets out the proper practice for legal practitioners where, upon settlement of a motor accident claim, the defendant insurer would be required to make payment to the plaintiff for the insurance proceeds, party-and-party costs and disbursements.

The Council is of the view that it is proper practice for a legal practitioner (*A*) acting for the plaintiff in a motor accident claim to, upon settlement of the claim, request the defendant insurer to issue a cheque for insurance proceeds, party-and-party costs and disbursements in favour of *A*'s law practice, if *A* has instructions from the plaintiff to do so and has the authority to receive payment on behalf of the plaintiff.

Where the defendant insurer chooses to issue the cheque addressed to the plaintiff, instead of *A*'s law practice (regardless of whether a request to issue a cheque in favour of *A*'s law practice has been made), *A* may, unless otherwise instructed, request the defendant insurer to issue a replacement cheque in favour of *A*'s law practice, or to issue separate cheques in favour of the plaintiff and *A*'s law practice respectively. It would however be improper for *A* to reject outright a cheque made directly payable by the defendant insurer to the plaintiff or threaten the defendant insurer with execution.

This Practice Direction supersedes the Council's Practice Direction (PDR 1989, chap 1, para 51) on "Payment of Cheques" which has also been reproduced in the Law Society's Guide to Professional Conduct for Advocates and Solicitors (2011) at page 93.

For the avoidance of doubt, this Practice Direction is only for the reference of practising members of the Law Society and is not to be relied upon by third parties.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 4.6.1

[Formerly PDR 2013, para 95; PDR 1989, chap 7, para 27]

WILLS – INQUIRY IF ANY MADE

Members of the Bar are asked to note that as letters enquiring whether a deceased person when alive had made a will are becoming so frequent, and with a view to saving time, the absence of any replies to such enquiries after a reasonable period should be taken to mean that the deceased person had not made a will.

It is customary for legal practitioners who have been instructed to act in the estate of a deceased person to circulate to other law practices enquiring whether the deceased made a will in their office.

Members may submit an online application to place notices on "Information on Wills" which will be disseminated to all Law Society members via electronic direct mail or eBlast on a monthly basis.

[Note: For more information on this service, members may refer to Law Society's website at *http://www.lawsociety.org.sg/For-Lawyers/Services-for-Members/Information-on-Wills*.]

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 5.1.1

[Formerly PDR 2013, para 103]

EQUITY IN LIEU OF FEES

A. General Considerations for an Arrangement to Accept Equity in Lieu of Fees

[Formerly Council's Practice Direction 1 of 2000]

1. Introduction

The Council of the Law Society has been requested to give guidance on the issue of members accepting equity in lieu of fees. This was referred to the then Ethics Committee (currently the Advisory Committee of the Professional Conduct Council), which studied the guidance standards/opinions of the Law Society of England and Wales and the American Bar Association before making its recommendations to the Council. In making these recommendations, the Ethics Committee considered the fact that circumstances in Singapore differ in many respects and as such, the rules and guidance standards of other jurisdictions, while informative, do not necessarily apply in the Singapore context.

After careful consideration, the Council of the Law Society had accepted the recommendations of the Ethics Committee.

The expression 'Law Practice' in this Practice Direction includes a legal practitioner, a sole proprietorship, partnership, law corporation and its directors, shareholders or employees.

(a) What is an arrangement to accept equity in lieu of fees?

It is an arrangement where a client offers and a Law Practice accepts shares or share options in the client company itself or in any other company owned by the client either in full satisfaction for legal services provided by the Law Practice or as part of the remuneration for such services. Subject to the matters set out below, in principle, Council does not see any objection to a Law Practice accepting equity in lieu of fees for legal services provided by the Law Practice.

(b) Issues a Law Practice should consider when accepting equity in lieu of fees

Council recognises that the pressure to accept equity in lieu of fees is not self-motivated but rather requested by certain clients. It is a matter, which involves very careful consideration with full recognition of the commercial risks involved apart from any ethical considerations. The Law Practice will have to consider, *inter alia*, the following issues:

(i) contingency fee arrangements;
(ii) overcharging;
(iii) conflict of interest; and
(iv) secret profits.

(i) Contingency fees

A distinction must be drawn between contentious and non-contentious work. There is no prohibition against contingency fee arrangements for non-contentious matters and as such a Law Practice may accept equity in lieu of fees for non-contentious work, even if doing so amounts to a contingency fee arrangement.

However, in contentious matters, a statutory prohibition exists by virtue of section 107 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA'). A Law Practice cannot enter into an agreement to accept equity in lieu of fees in a contentious matter where such an agreement amounts to a contingency fee arrangement. Whilst not all agreements to accept equity in lieu of fees are necessarily contingency fee arrangements, the Law Practice should consider whether their specific fee arrangement with the client amounts to one.

One of the factors which may give rise to a contingency fee arrangement is where the value of the shares or share options given to the Law Practice depends upon the successful outcome of the matter on which the Law Practice is instructed to act. It is obviously not possible to exhaustively define all situations, which would give rise to a contingency fee agreement. Each case would depend on its own facts.

An agreement where the acquiring of shares is contingent on the outcome of a contentious matter or where the shares are themselves the subject matter of the litigation, would amount to contingency fee arrangement under section 107 of the LPA.

In addition to the above, Council reminds members of the restriction in section 107(3) of the LPA in relation to the law of maintenance and champerty.

(ii) Overcharging

A Law Practice must consider the requirement of reasonableness of any fee arrangement whether in contentious or non-contentious matters. The equity that a Law Practice receives in lieu of fees must be reasonable. Section 109 of the LPA refers and particular attention is drawn to sections 109(1), 109(3), 109(4), 109(5) and 109(6) of the LPA.

In determining reasonableness the following factors, *inter alia*, should be considered:

(a) the quantity of shares to be owned by the Law Practice;
(b) the liquidity of the shares, including whether the shares are traded publicly at the time of the fee agreement and if the shares are not traded, the probability of such shares being publicly traded in the future;
(c) the present and anticipated value of the shares; and
(d) whether the shares offered are subject to terms which may affect the value of the shares to the Law Practice.

Council notes that there is no judicial guidance as to whether the courts would look at the value of the shares/share options at the time these are granted to the Law Practice or their ultimate value. This uncertainty could have a bearing on the outcome of taxation proceedings under section 109 of the LPA or when assessing the reasonableness of the agreement to accept equity in lieu of fees.

It would therefore be prudent that any agreement between a Law Practice and client for equity in lieu of fees should be in writing. This would reduce the risk of challenge that the agreement was unfair and/or unreasonable.

The risk of challenge will also be reduced if the client is advised to obtain independent legal advice on the terms of any proposed agreement. At the very least the Law Practice should suggest to the client that they should consider taking independent advice and the reasons for doing so. Council notes that several law firms in America have been held liable for failing to advise their clients to obtain independent legal advice before entering into such arrangements.

(iii) Conflict of interest

The shareholding in the company may affect the future professional dealings between the Law Practice and the client. The shareholding may put the Law Practice in a position of conflict of interest such that the Law Practice may have to consider if it can provide impartial representation or advice to the client. Council notes that the risk of potential conflict of interest has been the source of greatest concern in other jurisdictions and has, in some cases, given rise to litigation between the client and the Law Practice.

Where a Law Practice agrees to accept equity in lieu of fees, it should ensure that by doing so it does not thereby put its commercial interests above the interest of the client. The Law Practice should not allow its judgement, objectivity and loyalty to the client to be compromised in any way by reason of its equity involvement.

The acceptance of a non-executive directorship in the company is not prohibited. Again, in view of the equity participation, a Law Practice including individual members of the Law Practice will have to consider issues of personal and professional conflict of interest.

The Council would discourage a Law Practice from receiving a substantial share ownership in the company. This will potentially cause a clear conflict of interest.

Rules 20–22 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) on conflict of interest are relevant and should be carefully considered.

(iv) Secret profits

Because of its fiduciary relationship with the client, the Law Practice should ensure that there is no risk of it receiving any profits which may be construed as secret profits.

(c) Other matters

The Law Practice should also bear in mind the prohibition against sharing of profits with an unqualified person. This prohibition would apply equally to shares received by the Law Practice in lieu of fees. Council would therefore prohibit a Law Practice from holding its equity ownership of shares received in lieu of fees in a separate or distinct investment partnership/company if such an arrangement amounts to sharing of profits with an unqualified person.

Nothing herein will prohibit a Law Practice from selling any shares received in lieu of fees to any third party for valuable consideration in an arm's length transaction. The Law Practice should also carefully consider the income tax and goods and service tax implications of receiving equity in lieu of fees.

B. Forming of Holding Company to Hold and Receive Equity Ownership Taken by the Firm in Lieu of Fees
[Formerly Council's Practice Direction 2 of 2000]

The Council issued Part A of this Practice Direction for the guidance of members on the issues to be considered when accepting equity in lieu of fees.

The Law Society's Ethics Committee was requested to give guidance on the issue of members forming a holding company to hold and receive equity ownership taken by the Law Practice in lieu of fees and whether to do so would amount to sharing of fees with an unqualified person.

The Council does not see any difficulty in members forming such a holding company purely as a vehicle to hold equity received in lieu of fees subject to the following:

(a) All the shares in the holding company must be legally and beneficially owned by legal practitioners who have valid practising certificates. All the directors of the holding company must also be legal practitioners who have in force practising certificates.

(b) Legal practitioners who have valid practising certificates must beneficially own the equity in lieu of fees (to be vested in the holding company).

(c) The above requirements must be complied with at the time the agreement to accept equity in lieu of fees is entered into and when the entitlement to receive such equity, pursuant to the agreement, arises.

Members should make appropriate arrangements to comply with the above in the event of a member ceasing practice and/or upon death.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 5.2.1

[Formerly PDR 2013, para 58]

FEE ARRANGEMENTS WITH CLIENTS

A. Propriety of an Agreement to Accept Payment of Solicitor and Client Costs Only in the Event of Success and Recovery by the Client of his/her Fixed Party and Party Costs in the Case of a Judgment in Default of Appearance
[Formerly Council's Practice Direction 3 of 2004]

Council considered and deliberated on the ethical propriety of a member agreeing with clients to only charge costs at an amount fixed as party and party costs ('P & P Costs') for judgments in default of appearance and payable upon the clients' recovery of such costs.

Council also deliberated if it was ethical for a member to charge less than the fixed P & P Costs if clients do not recover legal costs from the judgment debtor.

Council has ruled that entering into such fee sharing arrangement will mean that a solicitor's (as defined by the Act) solicitor and client costs ('S & C Costs') are effectively dependent on the recovery of P & P Costs by a client and such conduct can amount to a breach of section 107 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA').

B. Fee Arrangements with Clients for Judgments in Default of Appearance
[Formerly Council's Practice Direction 4 of 2004]

Guidance to members:

(a) It does not constitute a breach of Council's Practice Direction if a member agrees with his/her client to only charge S & C Costs at an amount equal to fixed P & P Costs for judgments in default of appearance so long as payment of S & C Costs are not contingent upon the client's recovery of his/her P & P Costs from the judgment debtor.

(b) It will be a breach of the Practice Direction if a member agrees with his/her client to charge S & C Costs at an amount less than the fixed P & P Costs for judgments in default of appearance.

(c) The ruling of Council contained in Part B of this Practice Direction applies equally to P & P Costs for judgments in default of defence.

C. Ethical Propriety of Fee Arrangements with Clients Where Payment of Solicitor and Client Costs and Disbursements is Contingent on Recovery of Party and Party Costs and Disbursements
[Formerly Council's Practice Direction 2 of 2012]

It has come to the attention of the Council that a client of a member has set the following guideline on the billing of S & C Costs: "solicitor and client costs and disbursements would be limited to whatever party and party costs and disbursements are recovered from the other party" and "in the event that no costs are recovered from the other party, solicitor and client costs will be waived and only disbursements billed".

Council has taken the position that such a fee arrangement would be improper for the following reasons:

(a) any fee arrangement that provides for payment of S & C Costs that is contingent on the amount of P & P Costs recovered by a client would render a solicitor in breach of section 107 of the LPA and rule 18 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015') because the solicitor would have an interest in the subject matter of the litigation or be purchasing an interest in the client; and

(b) the Council has deemed a fee arrangement similar to the guideline referred to in the second paragraph of Part C of this Practice Direction herein as improper under Parts A and B of this Practice Direction in the context of a solicitor acting for a client in obtaining a judgment in default of appearance or defence.

Council continues to be of the view that in any contentious matter, it is improper for solicitors to have an interest in the subject matter of the litigation or to purchase an interest of a client. Therefore, such a fee arrangement would result in any solicitor acting for the client being in breach of section 107 of the LPA and rule 18 of the PCR 2015 and liable for professional misconduct under section 83(2) of the LPA. Further, section 107(3) of the LPA provides that a solicitor, like any other person, shall be subject to the law of maintenance and champerty.

[Note: Propriety of a solicitor representing an impecunious client where fees or disbursements are likely to be recovered if the claim is successful:

(a) The above paragraphs should be read in light of the decision in *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] SGHC 135 ('*Kurubalan*'), where the judges opined that it would be permissible and even honourable for a solicitor to act for an impecunious client in the knowledge that he/she would likely be able to recover his/her appropriate fees or disbursement if the client was successful in the claim and could pay him/her out of those proceeds or if there was a costs order obtained against the other side.

(b) The judges in *Kurubalan* went on to explain that such an arrangement would not be caught by section 107 of the LPA or rule 37 (currently rule 18 of the PCR 2015) because it would not amount to acquiring an interest in the fruits of litigation. In such a case, the solicitor is putting aside his/her usual desire to be assured that he/she will be paid his/her fees in the interests of ensuring that the client is not denied the opportunity to seek justice. There can be no wrong in a solicitor taking on a matter even if, as a practical matter, he/she knows that the client is unlikely to be able to afford to pay his/her bill unless the claim is successful or a costs order is obtained.

(c) The judges in *Kurubalan* took the view that the Practice Directions should not be read to apply to the impecunious litigant who would not otherwise be able to afford legal representation, as there is an overriding public interest in ensuring access to justice. However, the rules that proscribe champertous agreements are statutorily enacted and lawyers who enter into champertous agreements can expect to face at least a substantial period of suspension.]

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 5.2.2

[Formerly PDR 2013, para 44; PDR 1989, chap 1, para 37(a)]

NON-REFUNDABLE DEPOSIT OR RETAINER

A. Requirement for Client to Pay a Non-Refundable Deposit or Retainer

The Council has received several complaints about members engaged in contentious work requiring their clients to pay a 'non-refundable deposit or retainer'. Members are reminded that section 111 of the Legal Profession Act (Cap 161, Cap 2009 Rev Ed) ('LPA') provides that:

> "(1) Subject to the provisions of any other written law, a solicitor or a law corporation or a limited liability law partnership may make an agreement in writing with any client respecting the amount and manner of payment for the whole or any part of its costs in respect of contentious business done or to be done by the solicitor or the law corporation or the limited liability law partnership, either by a gross sum or otherwise, and at either the same rate as or a greater or a lesser rate than that at which he or the law corporation or the limited law partnership would otherwise be entitled to be remunerated.
>
> (2) Every such agreement shall be signed by the client and shall be subject to the provisions and conditions contained in this Part."

Section 113(2) makes it clear that every question respecting such agreement as is referred to in section 111 may be examined and determined and the agreement may be enforced or set aside. Section 113(4) provides that "[i]f the terms of the agreement are deemed by the court or Judge to be unfair or unreasonable, the agreement may be declared void" and section 113(7)(*c*) empowers the court or a judge to "order the whole or any portion of the amount received by a solicitor … to be repaid by him, on such terms and conditions as to the court or Judge seem just".

The Council emphasises that section 111 of the LPA does not give solicitors (as defined by the Act) a *carte blanche* to agree to an unreasonable fee and that it is well settled that overcharging a client whether in a bill of costs or otherwise may amount to professional misconduct.

B. Entitlement to Keep Fees Collected as a Non-Refundable Deposit or Retainer

[Formerly PDR 1989, chap 1, para 37(b)]

The Council has noted that there may be instances where members felt that they would be entitled to keep their fees collected as a non-refundable deposit or retainer irrespective of the amount of work done so long as clients agree to the arrangement. This is not so in all cases.

It is recommended that members note sections 111–113 of the LPA and be aware of the need to comply with them.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 5.2.3

[Formerly PDR 2013, para 87; PDR 1989, chap 7, para 12]

TWO-THIRDS RULE

The Law Society considered a letter enquiring whether in its opinion the English rule of practice and etiquette known as the 'two-thirds rule' whereby junior counsel is paid a fee equivalent to two-thirds of that paid to his leader is applicable in Singapore.

The Law Society was not aware of the existence of such a rule and had never enforced the same in Singapore.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 5.3.1[1]

[Formerly PDR 2013, para 104]

USE OF ELECTRONIC PAYMENT METHODS AND THE TREATMENT OF FEES ASSOCIATED WITH PAYMENT OF SOLICITORS' BILLS OF COSTS

A. Arrangement for Use of Electronic Payment Methods for Payment of Solicitors' Bills of Costs and Other Payments

[Supersedes Council's Practice Direction 1 of 2001]

Part A of this Practice Direction supersedes Council's Practice Direction 1 of 2001.

This part relates to the use of electronic payment methods for the payment of solicitors' (as defined by the Legal Profession Act (Cap 161, 2009 Rev Ed) ('the Act')) bills of costs (including disbursements) and for other payments made to a law practice from a client. For the avoidance of doubt, the reference to solicitors' bills of costs includes tax invoices issued by a law practice to a client/s for work done.

The Council reviewed information regarding electronic payment methods provided by the Monetary Authority of Singapore ('MAS') and the Association of Banks in Singapore ('ABS') to ensure that use of electronic payment methods do not breach any of the provisions of the Act and the Rules made thereunder. Details on what constitutes an electronic payment can be found in **Annex A** of this Practice Direction.

Law practices have the liberty to decide which payment method/s it wishes to accept from clients, whether electronic or otherwise. If a law practice elects to receive payment through electronic payment methods, it should continue to ensure compliance with the Legal Profession (Solicitors Accounts) Rules (Cap 161, R8, 1999 Rev Ed) for the payment of solicitors' bills of costs and other payments.

B. Treatment of Fees Associated with the Use of Electronic Payment Methods for Payment of Solicitors' Bills of Costs

[Supersedes Council's Practice Direction 1 of 2002]

Part B of this Practice Direction supersedes Council's Practice Direction 1 of 2002.

1. Types of fees associated with the use of electronic payment methods

i. Merchant discount rate associated with the use of debit and credit cards

In November 2001, the Council published its Practice Direction on the "Use of Credit Cards" for the payment of solicitors' bills of costs in the Singapore Law Gazette. Under the acceptance process as practiced by all merchant banks in Singapore, the merchant discount rate ('MDR') is automatically deducted by the bank when a law practice processes debit and / or credit card transactions. Therefore, a law practice will be paid its bill minus the agreed MDR.

ii. Service charge fees associated with electronic payment methods other than debit and credit cards

[1] The previous version of Practice Direction 5.3.1 titled "Use of Credit Cards" was issued on 31 January 2019.

If a law practice elects to receive payment for its solicitor's bills of costs (including disbursements) through an electronic payment method (distinct from payment via a debit or credit card), the law practice may incur a service charge fee.

For easy reference, the MDR (referred to in (i)) and service charge fees (referred to in (ii)) shall be collectively referred to as transaction fees from here on in.

2. Ways in which law practices shall be permitted to deal with transaction fees

There are three possible arrangements available to a law practice in dealing with transaction fees. These are as follows:

A. A law practice absorbs the transaction fees ('Arrangement A');

B. A law practice passes on the transaction fees to the client ('Arrangement B'); or

C. A law practice shares the transaction fees with the client ('Arrangement C').

In relation to Arrangement A, a law practice shall be permitted to absorb the transaction fees. For example, if a law practice's bill of costs is $100 and the agreed transaction fees is 2%, the law practice will be paid $98 from the transaction and $2 will be retained by the electronic payment service provider.

In relation to Arrangements B and C, a law practice shall be permitted to pass on or share the transaction fees with the client subject to the law practice complying with:

(1) its contractual obligations with the electronic payment service provider; and

(2) the requirements in Rule 17(3) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015') and the Law Society of Singapore Practice Direction 7.4.3 by:

(a) Inserting a clause in the letter of engagement to inform the client of the specific arrangement under which the client will bear any transaction fees;

(b) Drawing the client's attention to the said clause and s/he should consent to bear any transaction fees in circumstances specified in the said clause; and

(c) Clearly itemising the transaction fees in each tax invoice issued to the client.

The Council will not view Arrangements A, B or C as sharing of fees by a law practice with the electronic payment service provider as contemplated by Rule 19 of PCR 2015.

For the avoidance of doubt, the electronic payment channels only act as a medium in which fees are transferred and shall not be a means to circumvent Rule 19 of PCR 2015. For example, if the electronic payment channel is part of a referral set up which also charges a fee for referring clients to law practices, such referral fees shall not be deemed as transaction fees.

You may circulate this Practice Direction to your electronic payment service provider when communicating with them on the terms of the agreement you wish to enter into with them.

Date: 17 December 2020

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

Annex A: Details of Electronic Payments Methods

Annex A sets out the definition of electronic payment and provides a non-exhaustive list of electronic payment methods in which clients may use to pay the solicitors' bills of costs and other payments. Examples of forms of electronic payment are also provided for illustrative purposes only and are non-exhaustive.

Electronic payment refers to the payment of goods or services through an electronic medium and excludes modes of payments by cheques, cashier's orders and cash.

A non-exhaustive list of electronic payment methods in which clients may use to pay the solicitors' bills of costs and other payments is as follows:

(a) Debit Card (for example, NETS);

(b) Credit Card (for example, MasterCard, Visa, American Express, Diner's club (Discover) and China Union Pay);

(c) E-wallet (for example, Apple Pay, Android Pay, Samsung Pay, Google Pay, PayPal, DBS PayLah! and Dash);

(d) Mobile Payment (for example, PayNow, OCBC Pay Anyone and UOB Mighty);

(e) PayNow Corporate;

(f) Non-Instant Funds Transfer (for example, GIRO Payment, Telegraphic Transfer); and

(g) FAST Payment.

Members are reminded to review any information offered by the electronic payment service providers on whether their law practice or client would be subject to transaction fees if a particular electronic payment method is used.

For the electronic payment methods not found in the above list, members are also reminded to review any information offered by the electronic payment service providers to ensure their compliance with the rules of the profession.

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 5.4.1

[Formerly PDR 2013, para 63; Council's Practice Direction 3 of 2009]

USE OF DEBT COLLECTORS FOR THE RECOVERY OF LEGAL FEES AND EXPENSES

The Council takes cognizance of instances where law practices engaged the services of debt collectors to recover outstanding legal fees. In one case, a former client of a law practice lodged a complaint with the Council.

For the purposes of this Practice Direction, the term 'debt collector' means any person engaged in any business of collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another.

Unlike a number of other jurisdictions, there appears to be a paucity of legislation and guidelines in Singapore dealing specifically with the conduct of debt collectors. The use of debt collectors by legal practitioners and law practices raises a number of potential issues:

(a) There is a potential for the use of abusive, deceptive, and unfair debt collection practices by debt collectors. Unlike practicing legal practitioners, debt collectors are not bound by prescribed professional standards of conduct and owe no fiduciary or other special duties.

(b) In certain circumstances, the remuneration arrangement for debt collectors may breach the existing rules relating to fee sharing and the payment of commissions under rule 19 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015).

(c) The use of debt collectors to recover outstanding legal fees and expenses may also breach the duties of confidentiality of a legal practitioner, as well as derogate from the dignity of the legal profession and adversely affect the standing and perception of the legal profession in the eyes of the public.

(d) Legal practitioners, as officers of the court, should bear in mind that they owe fiduciary obligations to their clients and that the courts are the ultimate arbiters of the recovery of any legal fees and expenses. It would therefore be improper for legal practitioners and law practices to recover their fees and expenses by adopting a method used by some creditors in ordinary creditor/debtor relationships.

In view of the above, the Council takes the position that legal practitioners and law practices are not to engage, directly or indirectly, the services of debt collectors to recover outstanding legal fees and expenses.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 5.5.1

[Formerly PDR 2013, para 57; Council's Ruling 1 of 1996]

SHARING OF FEES BETWEEN LEGAL PRACTITIONERS

Increasing specialisation and the need to tap the experience of more senior legal practitioners has given rise to the question of sharing costs between specialist/senior legal practitioners and the instructing legal practitioners.

The Council envisages three different situations in which this question may arise:

(a) Seeking guidance

Where a legal practitioner needs to consult another legal practitioner who is either a specialist or more experienced member of the profession concerning some aspects of a case which he/she is unsure of or needs guidance on.

In these instances, the legal practitioner may obtain an opinion, whether orally or in writing, from another legal practitioner who has been consulted and an appropriate fee may be agreed upon between the legal practitioner seeking and giving guidance. There is nothing improper in seeking this kind of assistance.

(b) Referral

A legal practitioner referring a matter to another legal practitioner who may have better expertise and experience than the former legal practitioner.

A mere referral should not result in any costs being demanded or expected by the legal practitioner referring the client to another legal practitioner. This would be tantamount to 'brokering' and should not be permitted or condoned. Therefore, the legal practitioner in question should not claim costs for a mere referral.

(c) Retainer

Where the legal practitioner retains the services of the counsel owing to seniority and specialist knowledge.

In these situations, the legal practitioner continues to be the legal practitioner on record and engages the services of senior counsel to appear in court. The fees of the senior counsel may be separately agreed upon, or the fees charged to the client may be shared between the legal practitioner on record and the counsel appearing in court.

In all the three different situations mentioned above, the legal practitioner engaged by the client should consult and inform the latter that another legal practitioner will be handling the matter due to its complexity. The client's consent should be obtained before the brief is referred to another legal practitioner. If consent is not obtained, the legal practitioner's conduct will be open to query by the client and may be improper. See also rules 26 and 34 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015).

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

COUNCIL'S GUIDANCE NOTE 5.6.1 OF 2022

CONDITIONAL FEE AGREEMENTS

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1. This Guidance Note takes effect on 1 August 2022 and is issued to assist law practices and practitioners with the preparation and use of Conditional Fee Agreements for the scope of proceedings prescribed under the Legal Profession Act 1966 ("**LPA**").

2. This Guidance Note is not intended to be the authoritative guide on Conditional Fee Agreements. Its primary aims are to facilitate the introduction of Conditional Fee Agreements to our legal landscape and proffer best practices for practitioners who elect to enter into Conditional Fee Agreements with their clients.

3. This Guidance Note does not in any way detract from a practitioner's existing professional and ethical obligations under the Legal Profession Act 1966 and the Legal Profession (Professional Conduct) Rules 2015 ("**PCR**").

I. INTRODUCTION

4. To strengthen Singapore's position as an international legal and dispute resolution hub, the LPA was amended with effect from 4 May 2022 to establish a framework for Conditional Fee Agreements to be entered into between practitioners and clients in selected proceedings.

Definition of Conditional Fee Agreements

5. Section 115A(1) of the LPA defines a Conditional Fee Agreement (hereinafter "**CFA**") as:

> *"An agreement relating to the whole or any part of the remuneration and costs in respect of contentious proceedings (whether relating to proceedings in Singapore or any state or territory outside Singapore) conducted by a solicitor, a foreign lawyer, or a law practice entity, which provides for the remuneration and costs or any part of them to be payable only in specified circumstances, and may provide for an uplift fee."*

6. CFAs are not Contingency Fee Agreements, which are agreements where practitioners agree to accept an agreed percentage of the sum or damages recovered by a client. The practitioner's fee has no direct correlation to the work done, and comes out of the money awarded to the client. For the avoidance of doubt, **Contingency Fee Agreements continue to be prohibited under Singapore law** and should not be entered into.

Illustrations

Proposed Fee Structure	Nature of Agreement
Partner X's usual hourly rate is $500. They agree to grant the client a 30% discount and charge an hourly fee of $350, on condition that 50% of the sum or damages awarded to the client is paid to Partner X in the event of a successful outcome ("**Success Fee**").	Payment of the Success Fee is contingent on the outcome of the case and is calculated as a percentage of the sum or damages awarded to the client. This is a form of a Contingency Fee Agreement which remains prohibited under existing Singapore law.
Partner X's usual hourly rate is $500. They agree to grant the client a 30% discount and charge an hourly fee of $350, on condition that in the event of a successful outcome, the client will pay an "Uplift Fee" amounting to 150% of	The Uplift Fee is calculated based on the practitioner's hourly rate of remuneration and is unrelated to the sum or quantum of damages awarded to the client. This would be considered a Conditional Fee

the usual hourly rate (i.e. $750).	Agreement which is now permitted under Singapore law for a prescribed scope of proceedings.

7. For Non-Refundable Deposits or Retainers, practitioners may refer to The Law Society of Singapore Practice Direction 5.2.2 (Non-Refundable Deposit or Retainer). As of the date of this Guidance Note, there is no impediment to usual payment practices, such as the collection of deposits for fees. However, practitioners should note that **no deposit should be collected for the uplifted portion**, which depends on the triggering of a condition which will take place on a future occasion.[1]

Use of Conditional Fee Agreements

8. Section 115A(1) of the LPA limits the use of CFAs to specified categories of "prescribed proceedings". In broad terms, these include:

(a) International and domestic arbitration proceedings;
(b) Certain proceedings in the Singapore International Commercial Court ("**SICC**"); and
(c) Court and mediation proceedings related to the above.[2]

9. Regulation 3 of the Legal Profession (Conditional Fee Agreement) Regulations 2022 ("**CFA Regulations**") sets out the list of "prescribed proceedings" in which a CFA may be used. We recommend that practitioners familiarise themselves with this provision, as well as Section 115B(6) of the LPA which further clarifies the scope of work that a CFA can cover.

10. As CFAs are not intended to replace traditional fee structures, practitioners and clients may agree on a traditional fee structure to apply for one area of work, and a CFA to apply for another. This means that practitioners and clients are at liberty to agree on a combination of both fee structures, subject to the requirements set out in the LPA.[3]

Types of Conditional Fee Agreements

11. A CFA can take different forms, which include:

(i) "No win, no fee"; and
(ii) "No win, less fee.

12. In a "no win, no fee" CFA, professional fees and the agreed uplift fee (if applicable) are only payable by the client in specified circumstances. In other words, **no professional fees will be payable if the specified circumstances are not met**.

13. In a "no win, less fee" CFA, professional fees and the agreed uplift fee (if applicable) are payable by the client in specified circumstances. **In the event the specified circumstances are not met, a discounted professional fee (as agreed in the CFA) will be payable by the client**.

14. There are no prescriptive guidelines as to which type of CFA is best for different proceedings. This would be a point of contractual negotiation between a practitioner and their client. However, practitioners should take into account and assess the commercial risks of a matter (e.g. whether the prospects of achieving the specified circumstances are highly unlikely) in determining what type of CFA to use.

II. ENTERING INTO A CONDITIONAL FEE AGREEMENT

[1] Second Reading dated 12 January 2022 by Second Minister for Law, Mr Edwin Tong, on the Legal Profession (Amendment) Bill [Parliament No. 14, Session No. 1, Volume No. 95, Sitting No. 46]
[2] Ibid.
[3] *Supra* note 2.

Structuring a CFA

15. Regulations 4 and 5 of the CFA Regulations prescribe the information, as well as terms and conditions to be included in a CFA.

16. To mitigate the risk of disputes on whether a CFA has been structured in accordance with the CFA Regulations, a sample CFA is set out in **Annex A** of this Guidance Note for a practitioner's use and modification.

17. Regulation 4(2)(b) of the CFA Regulations states that a client has the right to seek independent legal advice before entering into a CFA. We recommend that practitioners remind their clients of this right which includes the negotiations surrounding the specified circumstances set out within the CFA as well as the Uplift Fee.

18. A breakdown of the sample CFA set out in **Annex A** of this Guidance Note is set out below and includes a summary of topics a practitioner may encounter when preparing a CFA. Where applicable, references to relevant professional and ethical duties are made alongside the guidance proposed by the Law Society.

Section A: Scope of Work

Topic	Relevant Professional and Ethical Duties (Non-Exhaustive)	Guidance
Scope of the CFA	- To determine whether a CFA can be made, practitioners should first refer to Regulation 3 of the CFA Regulations for the list of "prescribed proceedings". - The CFA should address whether the CFA's scope extends to appeals, enforcement, special interlocutory applications (e.g. application for interim injunctions, interim payments), and setting aside proceedings.	Please refer to the provisions within the CFA Regulations.

Section B: Payment to Us

Topic	Relevant Professional and Ethical Duties (Non-Exhaustive)	Guidance
Charging of Professional Costs	- As the CFA forms part of the contract between the practitioner and client, the following documents should be attached to the CFA as Annexes and retained as one set: (a) The Letter of Engagement / Terms of Business (whichever is appropriate); and (b) The Warrant to Act. - As the CFA is part of the contract between the practitioner and the client, practitioners should ensure that the terms of the CFA, Letter of Engagement / Terms	Compliance with the general principles set out in the Legal Profession Act 1966, the Legal Profession (Solicitor's Remuneration) Order, and the PCR is to continue at all times. Practitioners should also keep in mind the Court's ability to review the enforceability of a CFA under Section 115D of the LPA.

	of Business (whichever is appropriate), and the Warrant to Act are consistent. Practitioners should also take care to specify which document takes precedence in the event of any conflict or inconsistency. - In the CFA, reference to the deposit of fees agreed under the letter of engagement may be expressly made within the CFA, reminding clients that they may be asked to provide further deposits as the matter progresses. To reiterate, **no deposit should be collected for the uplift portion**, which depends on the triggering of a condition which will take place on a future occasion. - As with the Letter of Engagement, the CFA must clearly state whether the fees quoted are exclusive of disbursements and GST.	
Specified Circumstances	- The CFA must clearly set out and define the circumstances that would constitute a successful outcome of the matter. This should account for whether reaching a settlement, obtaining certain cost orders, a mediated outcome, partial success, or early resolution of the proceedings constitute a successful outcome from the client's informed perspective. - The CFA should account for situations where Offer(s) to Settle are rejected and the client's claim proceeds to a hearing where they recover damages that are less than the Offer to Settle. The CFA should provide for how the practitioner would charge for work performed in these circumstances. - The CFA must not provide for the remuneration or costs to be payable as a percentage or proportion of the amount of damages or other amounts awarded to or recovered by the client in any contentious proceedings.[4] - To mitigate the risk of a dispute, it is recommended that this portion of the CFA be as detailed as possible so that clients have a clear understanding of their fee payment obligations, and what specified circumstances would trigger those fee payment obligations.	Take reasonable steps to facilitate the client's understanding of the specified circumstances set out in the CFA.

[4] Section 115B(4)(b) of the LPA

Uplift Fee (Optional)	- Practitioners and clients have the option of negotiating and agreeing on an "Uplift Fee"[5] which is payable in circumstances to be specified in the CFA. - If an Uplift Fee is agreed upon between the practitioner and the client, the particulars of the basis of calculation of the Uplift Fee, and an estimate or range of estimates of the resulting quantum of the Uplift Fee must be set out within the CFA in accordance with Regulation 5(b) of the CFA Regulations. - Current legislation does not impose a cap on the Uplift Fee and Parties are at liberty to negotiate this point with due consideration to be provided to the commercial risks of the matter. - To mitigate the risk of complaints on overcharging, practitioners may wish to consider capping their Uplift Fee. For reference, the following caps are (at the date of this Guidance Note) generally adopted in other jurisdictions: (a) **England and Wales** – 100% of normal professional costs (excluding disbursements); (b) **Australia (New South Wales)** – 25% of normal professional costs (excluding disbursements). **<u>Important Notes:</u>** - Practitioners are reminded that the CFA should not run afoul of Section 115C of the LPA which states that the Uplift Fee <u>cannot</u> be recovered as party and party costs by the client entering into the CFA. - Should the Uplift Fee exclude unpaid disbursements, this ought to be set out clearly within the CFA for clarity.	The charging of an Uplift Fee does not detract from a practitioner's ethical obligations set out in Rule 17 of the PCR.

<u>Section C: Cooling Off Period</u>

Topic	Relevant Professional and Ethical Duties (Non-Exhaustive)	Guidance
Cooling Off Period	- Practitioners are to ensure compliance with the cooling-off periods mandated in Regulations 5 (c) and (e) of the CFA Regulations.	

[5] Section 115A(1) of the LPA defines an "Uplift Fee" as remuneration or costs which are <u>higher</u> than the remuneration or costs that would otherwise be payable if there was no CFA.

	- Cost consequences of terminating the CFA within the cooling-off periods should be clearly set out and agreed upon.	

III. CONFIDENTIALITY

19. Practitioners should neither prohibit their clients from disclosing the CFA for the purposes of obtaining independent legal advice under Regulation 4(2)(b) of the CFA Regulations, nor prohibit their clients from disclosing the CFA to third-party funders who satisfy the qualifying requirements set out in Regulation 4 of the Civil Law (Third-Party Funding) Regulations 2017.

20. Practitioners are to continue acting in accordance with the confidentiality obligations set out in the PCR.

IV. TERMINATION OF CONDITIONAL FEE AGREEMENTS

21. Apart from the parties terminating a CFA during the cooling-off periods set out within Regulations 5 (c) and (e) of the CFA Regulations, it is recommended that practitioners enter into a new CFA with a client if they leave their law practice for another. All contractual, fiduciary, and confidentiality obligations that the departing practitioner may owe to the law practice they are leaving still apply.

22. To mitigate the risk of disputes, the CFA should clearly and expressly provide for cost consequences in the event the CFA is terminated before the specified circumstances are achieved.

23. Practitioners may decide whether to include a mutual termination clause within the CFA to provide for the termination of the CFA outside of the mandated cooling-off periods.

Date: 1 August 2022

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

ANNEX A

Sample Conditional Fee Agreement

1. This document, together with our (*letter of engagement or terms of business*), forms a binding legal contract between you and our law practice pursuant to Part 8A of the Legal Profession Act 1966 ("**LPA**") and the Legal Profession (Conditional Fee Agreement) Regulations 2022 ("**Regulations**").

2. Regulation 4(2)(b) of the Regulations grants you the right to seek independent legal advice on this document before entering into it. We, therefore, recommend that you review this document carefully and seek independent legal advice should you wish to do so, prior to signing.

A. Scope of Conditional Fee Agreement

3. You have instructed us to act for you in (*insert type of prescribed proceeding under Regulation 3 of the Regulations*) ("**the Proceeding**"). This Proceeding falls within the definition of "prescribed proceedings" under section 115A(1) of the LPA read with Regulation 3 of the Regulations, for which a Conditional Fee Agreement may be made.

4. This Conditional Fee Agreement covers:

   [Example:

   The Proceeding, but it does not cover any appeal against any judgment or final order made in the Proceeding and any proceedings in connection with the enforcement of a judgment or final order made in the Proceeding.

   OR

   the Proceeding, but it does not cover any proceedings in connection with the enforcement or setting aside of any arbitral award made in the Proceeding].

5. This Conditional Fee Agreement does <u>not</u> cover:

   [Example:

   Any counterclaim against you].

B. Payment to Us

6. The details of the charging of our professional costs are set out in our (*letter of engagement or terms of business*).

7. We will be entitled to receive payment of our professional costs (as stipulated below) from you in the following specified circumstances:

   [XX]

   [Example:

   Where you achieve a specified circumstance in the Proceeding which, as agreed with you, is (*insert details*), we will be entitled to receive (*insert %*) of our professional costs).]

8. If the agreed specified circumstance is not achieved in the Proceeding, we will be entitled to (*a lower fee or a fixed fee or no fee, or our Basic Professional Costs*).

9. Uplift Fee *(optional)*

9.1 [Example:

   Where you achieve a specified circumstance in the Proceeding which, as agreed with you, is (*insert details*), we will charge an additional "uplift" on our professional costs ("**Uplift Fee**").

   OR

   Where you achieve a specified circumstance in the Proceeding which, as agreed with you, is

(*insert details*), we will charge:

(a) The professional costs that will normally be charged if there was no Conditional Fee Agreement ("**Basic Professional Costs**"); and

(b) An additional "uplift" of [*x%*] on our Basic Professional Costs ("**Uplift Fee**").]

[*Note to Practitioners:*

Any amount of professional costs exceeding 100% of the Basic Professional Costs shall be considered an Uplift Fee as defined in Section 115A(1) of the LPA]

9.2 The Uplift Fee is set at (*insert %*) of our [*Basic Professional Costs*] if the agreed specified circumstance is achieved during, or at the conclusion of, the hearing of the Proceeding, or (*insert %*) if the agreed specified circumstance is achieved before the hearing of the Proceeding.

AND

The Uplift Fee is estimated to be:

(a) (*insert amount*) or between (*insert amount*) and (*insert amount*) if the agreed specified outcome is achieved during, or at the conclusion of, the hearing of the Proceeding; or
(b) (*insert amount*) or between (*insert amount*) and (*insert amount*) if the agreed specified outcome is achieved before the hearing of the Proceeding.

We will advise you of any change in circumstances which may cause a substantial variation of the above estimate(s).

9.3 Further particulars of the basis of our calculation of the Uplift Fee or the estimate or range of estimates of the Uplift Fee are as follows: (*insert details*).

9.4 This Uplift Fee cannot be recovered from your opponent and you remain personally responsible for paying us the Uplift Fee in full, if the agreed specified outcome is achieved in the Proceeding, regardless of any order for costs made against any other party.

9.5 If the agreed specified outcome is not achieved in the Proceeding, we will be entitled to (*a lower fee or a fixed fee or no fee, or our Basic Professional Costs*).

9.6 For the avoidance of doubt, you will continue to be obliged to pay in full the cost of all disbursements incurred in connection with the Proceeding. Disbursements are sums we have to pay to others and which are necessary for or assist in, the conduct of the Proceeding. Disbursements include, for example, experts' fees, court fees and travelling expenses.

C. Cooling off period and termination

10. Either you or our law practice may by written notice terminate this Conditional Fee Agreement, within five (5) days immediately after the date this Conditional Fee Agreement is entered into. If you terminate this Conditional Fee Agreement within the 5-day cooling off period, we will only charge you our professional costs (excluding any uplift fee) for services performed during the cooling-off period that was expressly instructed by or agreed to by you.

11. After this Conditional Fee Agreement is entered into, it may subsequently be varied only with the written consent of you and our law practice. Such variation may include the particulars setout in Section B. Either you or our law practice may by written notice terminate the variation agreement, within three (3) days immediately after the date the variation agreement is enteredinto. If you terminate the variation agreement within the 3-day cooling off period, we will only charge you our professional costs (excluding any uplift fee) for services performed during the cooling-off period that was expressly instructed by or agreed to by you.

[*Note to Practitioners:*

To mitigate the risk of disputes, practitioners are advised to also set out the cost consequences that may apply in the event the CFA is terminated before specified circumstances are achieved. This may include clarification that professional costs (excluding any uplift fee) for services performed up to the point of the CFA's termination may be chargeable.]

12. By signing this document, you have entered into a Conditional Fee Agreement with our law practice. This means that you will be bound by the terms and conditions in this Conditional Fee Agreement, including being billed in accordance with it.

D. Governing Law and Dispute Resolution

13. This Conditional Fee Agreement shall be governed by and construed in accordance with the laws of the Republic of Singapore.

14. All disputes, controversies, or differences ("**Dispute**") arising out of or in connection with this Conditional Fee Agreement, including any questions regarding its existence, validity, or termination, shall first be referred to mediation in Singapore, in accordance with the Law Society Mediation Rules for the time being in force. In the event that the Dispute cannot be resolved in mediation within the time agreed by the Parties, the Parties shall refer the dispute to arbitration in Singapore in accordance with the Law Society Arbitration Scheme and the rules thereunder for the time being in force.

Signed by the client: ……
Date: ……

Signed by the law practice: ……
Date: ……

Acknowledgement

You acknowledge that our law practice has informed you of the following:

(a) the nature and operation of this Conditional Fee Agreement, including but not limited to the terms stated herein;
(b) the uplift fee (if any) is not recoverable from the person mentioned in Section 115C(1) of the LPA.
(c) your right to seek independent legal advice before entering into this Conditional Fee Agreement; and
(d) despite this Conditional Fee Agreement, you will continue to be liable for any costs orders that may be made against you by a court of justice or an arbitral tribunal (whichever is relevant).

Signed by the client: ……
Date: ……

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 6.1.1

[Formerly PDR 2013, para 61; Council's Practice Direction 1 of 2009]

MEDIA COMMENTS AND INTERNET / SOCIAL MEDIA POSTS

The Council takes cognizance of the media attention that is often generated during the course of proceedings and the comments sought from members of the profession representing the parties to those proceedings, as well as commentary by members on those proceedings that may be accessible to third parties or the public (for example, posts on websites, blogs and social media). There have also been instances where members share facets of their professional life with third parties or the public via websites, blogs, social media or social messaging platforms.

The Council expects all members to exercise proper discretion in such circumstances and to refrain from making inappropriate comments, improper disclosures or inaccurate statements. Posts or comments made by members may inadvertently disclose confidential information, personal data, or cause embarrassment or disrepute to the profession. In this regard, it is good practice for law practices to implement internal policies on the use of the Internet and social media at work, and members should observe the following points when making posts or comments accessible to third parties or the public:

(a) to act in the best interest of the client;

(b) to uphold the standing of the profession;

(c) to maintain confidentiality between legal practitioner and client;

(d) to comply with the rules of professional conduct and publicity;

(e) to have regard to the risk of further dissemination, decontextualisation or distortion by third parties or the public;

(f) to avoid comments that may prejudice matters *sub judice* or that may be in contempt of court; and

(g) to avoid adverse remarks on the conduct or character of the opposing party.

Examples of inappropriate comments or improper disclosures include (but are not limited to) posts and/or comments:

(a) in relation to on-going proceedings;

(b) about clients, judges, opposing party and/or opposing counsel;

(c) which disclose confidential information/personal data obtained from clients, judges, opposing party and/or opposing counsel; and

(d) which contain photographs which disclose confidential information/personal data or parts of documents/files relating to a client's matter.

Members, as officers of the court, should adhere to standards imposed by the Legal Profession Act (Cap 161, 2009 Rev Ed) and the regulations made thereunder and in particular,

should maintain conduct befitting a legal practitioner and a member of an honourable profession. Law practices are also reminded to adhere to standards imposed by the Personal Data Protection Act 2012 (No 26 of 2012), and to implement policies and practices that are necessary for the law practice to meet its obligations under the Personal Data Protection Act 2012.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 6.1.2

[Formerly PDR 2013, para 75; Ethics Committee Guidance: 8 April 2010; 3 June 2008]

REFERRALS / HYPERLINKING OF WEBSITES

Websites (*eg*, property agents' websites) that hyperlink to law practices' websites for the purposes of assisting the property agents' potential clients are not prohibited, provided there is no form of financial arrangement between the property agent and the law practice. However, the description of the hyperlink must not mislead viewers by suggesting that the property agent is in a position to give legal advice, or that the law practice is formed by the property agent to provide legal consultation on the real estate matters, or that the viewer has to exclusively use the services of the law practice. Otherwise, this may constitute an offence under section 33(1)(*b*) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 6.1.1

[Formerly GN 2013, para 1; Council's Guidance Note 1 of 2001]

ETHICS AND INFORMATION TECHNOLOGY

1. This Guidance Note aims to provide members with both ethical and practical guidance on the use of information technology ('IT') in their practice.

A. Introduction

2. The advance of technology has impacted on the practice of law.

3. The Law Society's Ethics Committee ('EC') in 2001, with the assistance of representatives of the Information Technology Committee, has reviewed the practice guidelines on ethics and IT issued by jurisdictions such as the United States, Canada and England.

4. In recognition of the ever evolving nature of technology and legal practice, the guidelines, contained herewith, should not be regarded as definitive, final or exhaustive and the Council invites comments and feedback at any time and, where appropriate, the guidance can be modified to meet concerns raised.

5. This Guidance Note covers the following topics:
   (a) e-mail;
   (b) practising law on the Internet;
   (c) publicity; and
   (d) online referral and introduction schemes.

B. General

6. Members are reminded that when considering these guidelines, they must have reference to the current editions of the Legal Profession Act (Cap 161, 2009 Rev Ed), the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) and the Practice Directions of the Council.

7. Members are also advised to be aware of the laws against software piracy and not use, in their practices, any unlicensed software.

8. All references to a law firm include a legal practitioner and a law practice.

C. E-mail

(i) Adoption of an e-mail policy for the law practice

9. Electronic mail ('e-mail') is a communications medium. It is particularly suitable for short communications and for the sending of documents that can be printed by the recipient.

10. Members must comply with any relevant directions of the Council about correspondence with regard to the use of e-mail. In particular, e-mails should not contain particulars that a law practice will not include in its correspondence. E-mails should identify the sender and his/her designation in the law practice.

11. The Council will also advise law practices to draft their own office e-mail policy having regard to the PCR 2015 and this Guidance Note. Under rule 32 of the PCR 2015, a legal practitioner must "exercise proper supervision over the staff working under the legal practitioner in the law practice". The adopted e-mail policy by a law practice should ensure the proper supervision of all staff over the use of e-mail in their practice.

12. It is recommended that law practices ensure that if e-mail is used as a communication medium that the system is checked regularly for incoming e-mail and e-mails are distributed promptly to recipients. There should be an automated out-of-office response used when a legal practitioner or a member of staff of management level or equivalent seniority is away from the office for a day or more.

13. It is also recommended that a record of all outgoing and incoming e-mails sent under a client's file be kept whether as a paper record on file or stored by electronic means. Finally, it is also recommended that, as a matter of courtesy to a fellow legal practitioner, important or urgent messages, notices or documents are not sent by e-mail without prior notification of their dispatch.

14. The law practice should consider implementing policies for the sending and receiving of private e-mail, giving legal advice or opinions via e-mail, sending privileged documents via e-mail, and adequate supervision for incoming and outgoing e-mail.

15. As e-mails can transmit viruses to or from a law practice's computer system, every law practice should install and maintain anti-virus software to ward against such risks.

(ii) Client confidentiality and e-mail

16. Under rule 6(2) of the PCR 2015, a legal practitioner must not knowingly disclose any information which is confidential to his/her client and is acquired by the legal practitioner (whether from the client or from any other person) in the course of the legal practitioner's engagement. Therefore, care must be taken to ensure e-mail containing confidential information is protected.

17. A law practice must be aware of the risks of using e-mail. It is an insecure medium that may be subject to possible interception by hacking or inadvertent disclosure.

18. A law practice should consider and take appropriate measures to preserve confidentiality. Possible means of protecting confidentiality include the use of encrypted e-mail or secured lines.

19. If the law practice cannot ensure or has doubts as to the secured nature of communication via e-mail, then the law practice should obtain the prior informed consent of his/her client on the use of e-mail as a means of communication.

20. Confidential warnings should be added to all e-mails sent by the law practice in the course of its practice to warn unintended recipients of the confidential nature of the e-mail message. It is recommended that the warning be attached to all e-mails sent so that the law firm would not have the burden of considering whether to include the warning in each email sent.

21. A suggested example of an automated confidential warning modified from the Law Society of England's Guidance Note on e-mail is as follows:

> *Information in this message is confidential and may be legally privileged. It is intended solely for the person to whom it is addressed. If you are not the intended recipient,*

please notify the sender, and please delete the message and any other record of it from your system immediately.

(iii) Giving professional undertakings via e-mail

22. When a law practice accepts a professional undertaking via e-mail, it may not be apparent on the face of the e-mail if the purported sender sent the undertaking.

23. A law practice will be advised to exercise caution when accepting a professional undertaking via e-mail and to take steps to verify that the purported sender had in fact sent the undertaking given via e-mail.

D. Practising Law on the Internet

(i) Virtual law firm

24. The current Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') and the rules made thereunder do not prohibit a lawyer practising law via the Internet through the law practice's own website.

25. Section 25(1)(*a*) of the LPA, however, requires every practising solicitor (as defined by the Act) to declare the "principal address, and every other address in Singapore, of each Singapore law practice, Joint Law Venture and foreign law practice in which [he/she] will be practising". This information is recorded under section 27(1) of the LPA in the annual register of practitioners maintained by the Registrar of the Supreme Court and the Council of the Law Society.

26. Given the terms of section 25(1)(*a*)(iv) of the LPA, law practices must have a place of business at which clients may meet their solicitor and where mail and telephone calls are received. Therefore, a 'virtual office' where the business of a law practice is conducted entirely online is not allowed.

(ii) Client identification on the Internet

27. The PCR 2015 do not require you to meet your clients 'face to face'. However, if a law practice wishes to give online advice, there is a possibility that the law practice may not meet its client. It is advisable and, at times, may be essential that a law practice takes necessary steps to verify their client's identity and their legal capacity.

28. In the case of taking instructions from a person purportedly acting on behalf of his/her client, there is an obligation under rule 5(5) of the PCR 2015 for the legal practitioner to ensure that the person has the authority to give instructions on behalf of the client. In the absence of any evidence, the rule requires the legal practitioner must "obtain the client's confirmation of those instructions within a reasonable time after receiving those instructions".

(iii) Client care

29. The requirements of the PCR 2015 on the standards of adequate professional service apply when lawyers conduct their clients' businesses on the Internet. Accordingly the clients must receive adequate information on fees and costs and the progress of the client's matter. E-mails must, with reasonable dispatch, be responded to and proposals of settlement and positions taken by other parties explained in a clear manner.

E. Publicity and Section 33 of the Legal Profession Act

30. Publicity conducted through the Internet is subject to Part 5 of the PCR 2015 that governs publicity in or outside Singapore.

31. A law practice's website can be used as an advertising tool or to provide generic legal information that can be accessed by the general public or clients of the law practice. If legal advice is given, a law practice must realise that it could give rise to attendant obligations and risks in law. A law practice may wish to, therefore, consider appropriate disclaimers.

32. If legal advice is given or a document is prepared and dispatched through a third party, the law practice must be aware of the terms of section 33 of the LPA. An unauthorised person, as defined under section 32(2) of the LPA, may be in breach of section 33 of the LPA if he/she acts as an advocate or solicitor or provides legal services; *eg*, if your client requested you to prepare a letter of demand threatening legal proceedings for a debt owed and requested the same be dispatched to them via e-mail to enable them to forward the same to the debtor via e-mail, you should refuse to do so.

F. Online Referral and Introduction Schemes

33. Under sections 83(2)(*d*) and 83(2)(*e*) of the LPA, it is an offence if a solicitor (as defined by the Act) has "tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself, of any other advocate and solicitor" or "directly or indirectly, procured or attempted to procure the employment of himself, of any advocate and solicitor … to whom any remuneration for obtaining such employment had been given by him or agreed or promised to be so given".

34. Members are reminded that, under rule 39(2) of the PCR 2015, the legal practitioner must not, *inter alia*, reward a referrer by the payment of any commission or other form of consideration.

35. There are prohibitions against a law practice rewarding any person for referring work to them. The participation in any Internet referral schemes which requires the law practice to pay a fee or share fees paid for legal services referred would be a breach of the LPA.

36. Even if no fees are paid or shared, any participation in an online introduction service or referral service carried out in such a way as to 'unfairly attract work' to the law practice would be improper given the terms of section 83(2)(*b*) and/or section 83(2)(*h*) of the LPA.

37. The Council has also ruled that it is improper for a law practice to demand a referral fee from another law practice for merely referring work to it as this would be tantamount to 'brokering'.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 6.2.1

[Formerly PDR 2013, para 66]

ADVERTISEMENT AND MEDIA PUBLICITY

A. Presenting a News Show on the Radio or Television ('TV')

[Formerly PDR 1989, chap 6, para 1]

It is not improper for a legal practitioner to present a news show on the radio or TV.

B. Advertisement through Press or TV

[Ethics in Practice, Singapore Law Gazette, March 2010]

Advertisements through the press or TV, unlike advertisements via the distribution of flyers in public places, would not be touting or be reasonably regarded as touting. This is because advertisements through the press or TV do not have the added danger of direct-in-person solicitation (*ie*, the potential client may be subject to undue influence, intimidation and over-reaching because of the presence of his lawyer or his 'tout').

In addition, in the absence of the element of direct in-person solicitation in advertisements through the press or TV, the general public's need for information about legal services would outweigh the concerns arising from the commoditisation of legal services. Hence, advertisements through the press or TV would not be "unbefitting the dignity of the legal profession" under rule 44(1)(*b*) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015') or "likely to diminish public confidence in the legal profession or to otherwise bring the legal profession into disrepute" under rule 44(1)(*a*) of the PCR 2015.

C. Filming at Law Practice's Office Premises

[Ethics Committee Guidance: 12 June 2009]

There is no prohibition against such filming in the PCR 2015 but every legal practitioner of the law practice is responsible for ensuring that the filming complies with all the rules governing publicity in Singapore, which are found in Part 5 of the PCR 2015. Thus, the name of the law practice should not be disclosed in any of the scenes as such disclosure may reasonably be regarded as touting under rule 43(4) of the PCR 2015. It is, however, not improper for the name of the law practice to appear in the closing credits as acknowledgment of the law practice's participation.

In addition, every legal practitioner of the law practice must comply with his/her ethical obligations in rule 6 of the PCR 2015 by taking all necessary measures to ensure that no confidential information is disclosed to the film crew or any other third party during the filming within the office premises. For example, all confidential files and documents should be securely stored out of sight during the filming.

D. TV Commercials

[Ethics in Practice, Singapore Law Gazette, March 2010; Ethics Committee Guidance: 9 February 2010]

A legal practitioner should ensure that a TV commercial advertising his law practice is not reasonably regarded as misleading under rule 44(1)(*b*) of the PCR 2015 because the commercial, which is usually brief, is primarily viewed by laypersons who can easily form misimpressions that are difficult to correct.

A TV commercial may be reasonably regarded as misleading if:

(a) it contains a material misrepresentation (*eg*, representation that the practice is a leading family law practice when it does not have expertise or experience in family law);

(b) it omits to state a material fact (*eg*, failure to state that the law practice only acts in uncontested divorce matters if the practice has no expertise or experience in contested divorce matters);

(c) it contains any information which cannot be verified (*eg*, only a contact number is given without stating the name of the law practice); or

(d) it is likely to create an unjustified expectation about the results that can be achieved by the legal practitioner or his law practice (*eg*, stating that the law practice will be able to recover party and party costs in a civil matter).

A TV commercial is reasonably regarded as unbefitting the dignity of the legal profession under rule 44(1)(*b*) of the PCR 2015 if it suggests that other law practices overcharge their fees or sets out price lists. However, it is not improper for the commercial to refer generally to fixed fee arrangements to provide peace of mind and meet budgetary concerns. It is nevertheless advisable that, for proper compliance with rule 17 of the PCR 2015, a legal practitioner's duty to disclose detailed information relating to fees would be best discharged by personally explaining it to the client as opposed to highlighting it in a brief TV advertisement.

E. Complimentary Advertising in Newspaper
[Ethics Committee Guidance: 22 June 2009]

It is not improper for a law practice to accept an offer of complimentary advertising in a newspaper, so long as the law practice ensures that the advertising complies with rules 43 and 44 of the PCR 2015. In particular, the description of the specialisation of the law practice in the advertisement must be in accordance with rules 43(1)(*a*) and 43(2) of the PCR 2015.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 6.2.2

[Formerly PDR 2013, para 74]

DISTRIBUTION OF FLYERS OR LEAFLETS

A. Distribution of Leaflets/Flyers in Public Places
[Ethics in Practice, Singapore Law Gazette, March 2010; Ethics Committee Guidance 2006]

Distributing flyers or leaflets to the general public in public places can be an act which may be reasonably regard as touting under rule 43(4) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), unless the recipients had requested such flyers or had previously indicated a desire to know more about the law practice. Direct, in-person solicitation would also be a breach of rule 39(1) of the PCR 2015. In addition, distribution of flyers in public places is "unbefitting the dignity of the legal profession" under rule 44(1)(*b*) of the PCR 2015 because it is more commonly associated with the retail of goods and provision of services of a vocational and nonprofessional nature.

However, law practices may have copies of the flyer/leaflet at its premises for existing or potential clients or for third parties to pick up when visiting the premises. It is also permissible for the law practice to display the flyer and/or its contents on the law practice's website.

B. Distribution of Mailers and Calling Cards to HDB Residents
[Ethics Committee Guidance: 27 September 2000]

A law practice is not permitted to distribute mailers and calling cards to HDB residents as this would be a breach of rules 44(1)(*a*) and 44(1)(*c*) of the PCR 2015.

C. Flyer Stating "Legal Services", Followed by Law Practice's Contact Number
[Ethics Committee Guidance: 5 October 2009]

Such publicity is reasonably regarded as being misleading (under rule 44(1)(*b*) of the PCR 2015 read with rule 44(2)(*c*) of the PCR 2015) as it contains information that cannot be verified, because there is no way for the public to verify whether the advertiser of legal services is in fact a legal practitioner or a law practice. It is also deceptive and unbefitting the dignity of the legal profession under rule 44(1)(*b*) of the PCR 2015.

Even if such information can be verified by calling the contact number in the flyer, there is nevertheless a potential for abuse as the public is not able to independently verify the *bona fides* of the law practice until a call is made (upon which undue influence may unfortunately be exerted on the caller). At the very least, the name of the law practice should be stated in the flyer.

D. Placing Law Practice's Brochures and Newsletters at Client's Premises
[Ethics Quandary, Singapore Law Gazette, March 1999, page 16]

When a law practice places their brochures and newsletters at the client's premises, the Council may determine that the manner of publicity of the law practice is undesirable under rule 44(1)(*c*) of the PCR 2015.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 6.2.3

[Formerly PDR 2013, para 76]

IDENTIFICATION OF LEGAL PRACTITIONERS OR LAW PRACTICES

Claim to Expertise or Specialisation
[Ethics in Practice, Singapore Law Gazette, March 2010]

A. Letterheads

Legal practitioners named on a law practice's letterhead should be limited to:

(a) partners or directors of the law practice; and

(b) consultants, foreign lawyers or legal associates employed by the law practice in accordance with Singapore's legislative and regulatory requirements.

Rule 43(1)(*a*) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015') requires that any claim to expertise or specialisation can be justified. Only the names of persons who are listed in paragraphs (a) and (b) above are permitted in the letterheads of their law practices. The names of foreign lawyers or consultants who are not qualified to practice in Singapore and are not considered employees of law practices in Singapore are not permitted as such publicity may reasonably be regarded as being misleading, deceptive, inaccurate or false publicity under rule 44(1) of the PCR 2015 read with rule 44(2) of the PCR 2015.

B. Bills, Notepaper, Faxes, E-mails, Brochures and Websites

Material other than a law practice's letterhead, such as its bills, notepaper, faxes, emails, brochures and websites, may describe the law practice's relationship with the individual foreign lawyer. The following wording would be the minimum necessary for this purpose:

> "XYZ, qualified in [name of foreign jurisdiction] to practise [foreign law], not registered as a foreign lawyer practising in Singapore, not regulated by the Law Society of Singapore and not a member of the firm."

Contravention of this illustration may reasonably be regarded as being misleading, deceptive, inaccurate or false publicity under rule 44(1) of the PCR 2015 read with rule 44(2) of the PCR 2015.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 6.2.4

[Formerly PDR 2013, para 67; PDR 1989, chap 6, para 9]

PUBLICITY BY LEGAL PRACTITIONERS THROUGH PUBLIC APPEARANCES AND CONTRIBUTIONS TO PUBLICATIONS

A. Public Appearances by Legal Practitioners

Subject to Part 5 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), where a legal practitioner:

(a) makes an appearance on the radio or television;
(b) gives a talk or lecture;
(c) gives an interview to the press;
(d) contributes an article or writes a letter to the press; or
(e) edits or writes a book or other publication on a legal or non-legal subject,

he/she may be identified by name, the fact that he/she is a legal practitioner, and the name of the law practice of which the legal practitioner is a director, a partner or an employee and particulars may be given of any special qualifications or specialised knowledge directly relevant to the subject-matter of the publication or appearance.

B. Organising Seminars

[Ethics Committee Guidance: 27 May 2005]

It is not improper for a law practice to organise and advertise a seminar for members of the public to be conducted at its premises as a means of self-promotion and charge admission fees. However, the law practice must ensure compliance with the PCR 2015 at all times.

C. Answering of Questions on Legal Matters in Non-Legal Publications

[Formerly PDR 1989, chap 6, para 20; Ethics Committee's Guidance: 14 May 2010]

Rule 47 of the PCR 2015 does not apply to the answering of questions by legal practitioners on legal matters in non-legal publications, as a non-legal publication is not a 'facility' which holds itself out as giving legal assistance to the public. It is permissible for the legal practitioner to be identified by his/her name, the fact that he/she is a legal practitioner, and the name of the law practice of which the legal practitioner is a director, a partner or an employee and particulars may be given of any special qualifications or specialised knowledge directly relevant to the subject-matter of the publication.

This aside, legal practitioners should be mindful that providing such a service can entail legal consequences in the event wrong advice is given resulting in loss sustained by readers who have adopted such advice. Legal practitioners may therefore wish to include an appropriately worded disclaimer for the enquirer to seek independent legal advice before acting on any advice set out in the publication.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 6.2.5

[Formerly PDR 1989, chap 6, paras 11A and 11B]

VISITING CARDS – LEGAL PRACTITIONERS

To dispel any doubts which may exist in the minds of members of the Bar with regard to visiting cards, the Council has decided that a calling card may contain the following particulars:

(a) name;

(b) name of the law practice;

(c) address of the law practice;

(d) telephone number(s) of the law practice;

(e) telephone number(s) of the residence; and

(f) academic qualifications.

It is emphasised that although the name of the law practice may be included on a visiting card, the description of the law practice may not be so included. Provided below is a sample description that may be included on visiting cards:

[Name of Law Practice]
Advocates & Solicitors │Commissioner for Oaths [or similar description]

The Council's attention has been drawn to the fact that in some cases the Chinese version either of the name of the law practice or of the academic qualifications of the individual concerned may indicate the nature of the profession of the card holder. Those members who make use of a Chinese version of a calling card should ensure that the rules are observed.

In respect of calling cards of members of the Bar, the Council has decided that there is no objection to the member stating therein his/her professional qualification of 'Barrister-at-law' in the appropriate case.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.1.1

[Formerly PDR 2013, para 53; PDR 1989, chap 1, para 58]

CONFIRMING INSTRUCTIONS AND KEEPING ATTENDANCE NOTES

A. Confirming Instructions with Clients

In cases where more than one client is involved, it would be advisable to send all correspondence to each of the clients separately.

B. Attendance Notes

Legal practitioners are required to maintain contemporaneous notes of their dealings with clients, even for routine matters, as this would be an exercise in precaution and prudence. The attendance notes will be of real assistance in clarifying matters and corroborating a legal practitioner's testimony in the event of a dispute over what has transpired. Without these notes, the court may draw an adverse inference against the legal practitioner's testimony of events. The court has emphasised the need for attendance notes especially when a legal practitioner is dealing with multiple clients.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.1.3

[Formerly PDR 2013, para 96; PDR 1989, chap 7, para 28]

TRADE MARKS AND COMPANY NAMES

The Registrar of Companies does not consult the relevant Trade Marks Journal kept by Intellectual Property Office of Singapore when considering applications for a proposed new company name and the acceptance of a particular name is not an indication that no trade marks rights exist in it. Applicants are therefore advised in their own interests to avoid possible expense and inconvenience by investigating the possibility that others may have trade mark rights in the names – or parts of such names – they require before applying to the Registry of Companies. Searches may be made at the Intellectual Property Office of Singapore.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 7.1.1

[Formerly GN 2013, para 9; Council's Guidance Note 1 of 2012]

INFORMING A CLIENT OF HIS RIGHT TO TAXATION OR REVIEW OF A FEE AGREEMENT

1. This Guidance Note sets out the relevant principles on the scope of the duty of a solicitor (as defined by the Rules of Court (Cap 322, R 5, 2014 Rev Ed)) in informing a client of his/her right to have the court tax the bill of costs (including an interim bill) or review the fee agreement in all matters, whether contentious or non-contentious.

2. All solicitors "should act on the basis that they can have their bills of costs taxed under the law" and "have an obligation to inform their clients of this option": *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*ARSA*") at paragraph 33. The court in *ARSA* was of the view that "[a] solicitor who offers to have his/her bill taxed is … unlikely to have the frame of mind or intention to overcharge his/her client".

3. If a dispute arises on a bill or a query is raised about a bill in a contentious or non-contentious matter, the solicitor must inform the client in writing of his/her right to apply to court to have the bill taxed or to review the fee agreement. In this regard, the court in *ARSA* noted at paragraph 32 that:

> *"Even where a bill rendered by a solicitor is prima facie excessive, any potentiality of the solicitor's conduct in rendering that bill being regarded as professional misconduct in the form of overcharging can usually be remedied or ameliorated by an offer to have the bill taxed (if it is taxable) under the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (in this regard, see The* Law Society of Singapore v Tan Thian Chua *[1994] SGDSC 11 at [5], where the solicitor was merely reprimanded and ordered to pay the costs incurred by the Law Society in the disciplinary proceedings as,* inter alia*, [his/her] bill, although excessive, had been accompanied by an offer of taxation in the first place). Taxation provides the best means for an aggrieved client to determine what the proper fee is for the actual work done by [his/her] lawyer, and for the lawyer to avoid having to face a disciplinary charge for overcharging. If the bill is not taxable, the prudent course is for the solicitor to negotiate a mutually acceptable amount or even offer mediation."*

4. If the client consents to taxation or if the court orders taxation, it is preferable for the solicitor to draw the client's attention to Order 59, rules 28(4)–28(5) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), in particular that:

(a) the delivery of a bill of costs by a solicitor to his/her client shall not preclude the solicitor from presenting a bill for a larger amount or otherwise for taxation; and

(b) upon such a taxation, the solicitor shall be entitled to such amount as is allowed by the Registrar, notwithstanding that such amount may be more than that claimed in any previous bill of costs delivered to his/her client.

5. Where a solicitor believes that a client knows or reasonably ought to know of his/her right to have the court tax the bill of costs or review the fee agreement, *eg*, where the solicitor had informed the client of this right in a previous retainer, the solicitor may decide not to inform the client of this right. However, all solicitors should have regard to the words of the court in *ARSA*

at paragraph 33 that solicitors who “fail or omit to [inform their clients of the option of taxation] do so at their peril”.

6. In complying with this Guidance Note, all solicitors should:

(a) seek to resolve all disputes on costs with their clients through negotiation or mediation (such as the Law Society’s Cost Dispute Resolve scheme); and

(b) have regard to sections 108–128 of the Legal Profession Act (Cap 161, 2009 Rev Ed) and in particular the sections 109(6), 113 and 120.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 7.1.2

ADVISORY ON DISPUTE RESOLUTION OPTIONS FOR POTENTIAL LITIGANTS

1. This Guidance Note is issued to assist law practices and legal practitioners in advising clients on the types of dispute resolution options available for civil matters apart from litigation in Court.

2. Members are reminded that, under rule 17(2)(e)(ii) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), a legal practitioner must, in an appropriate case, together with his or her client evaluate the use of alternative dispute resolution ('ADR') processes.

3. Every legal practitioner, while observing the obligation in rule 17(2)(e)(ii) of the PCR 2015, is strongly encouraged to furnish and explain the "Standard Advisory for All Potential Litigants" ('the Advisory') at **Annex A** of this Guidance Note to clients.

4. Unless already obliged by contract to engage in ADR processes, legal practitioners are strongly encouraged to mention the following points:

(a) The types of dispute resolution options apart from litigation in Court:

(i) mediation;
(ii) arbitration;
(iii) neutral evaluation or determination; and
(iv) small claims tribunal (for certain cases[1]);

(b) An explanation on the eligibility criteria, process and consequence of each of the four dispute resolution options;

(c) An evaluation on the benefits and disadvantages of each of the four dispute resolution options; and

(d) A recommendation on which dispute resolution option is the most suitable (if any).

5. Legal practitioners may, in an appropriate case, modify the Advisory to suit the specific circumstances of their client's matter.

6. For the avoidance of doubt, it is not intended that departure from the recommendations at paragraphs 3 and 4 of this Guidance Note would result in disciplinary consequences for legal practitioners. The Guidance Note is to assist practitioners in the discharge of any existing obligation to assist their clients in evaluating the appropriateness of ADR.

Date: 22 December 2021

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

[1] Information on the specific type of disputes falling under the jurisdiction of the small claims tribunal may be found at https://www.statecourts.gov.sg/cws/SmallClaims/Pages/Before%20filing%20a%20claim.aspx.

ANNEX-A

STANDARD ADVISORY FOR ALL POTENTIAL LITIGANTS

1. You have been given this Information Sheet because you are currently thinking of commencing or defending litigation in the Singapore Courts.

2. As your lawyer will have explained to you in greater detail, instead of resolving your dispute through litigation in court, you can choose to have your case resolved by other means, for example: the Small Claims Tribunal (for certain cases), mediation, arbitration or neutral evaluation or determination. Mediation, arbitration and neutral evaluation or determination are forms of ADR (Alternative Dispute Resolution).

3. These alternatives are generally private and may be cheaper and faster depending on the specific considerations of your case, and **you are advised to consider them carefully *before* committing significant time and financial resources in litigating your case in court**.

4. A short explanation of these alternatives follows. **You should discuss these alternatives with your lawyer in detail, so that you understand their pros and cons.**

(A) <u>MEDIATION</u>:
Getting assistance from a *neutral third party* who will discuss the case with you and/or with the opposing party and help settle your dispute, out of court.

- Mediation is a **consensual, flexible, informal process** in which a trained neutral person (called a mediator) helps the parties find a mutually agreeable, practical solution to resolve their dispute i.e. an out-of-court settlement. Unlike a judge in court, the mediator does not decide the dispute and does not assign fault or blame.

- Mediation has been proven to be a **quick and highly effective** method of resolving disputes of all kinds, whether big or small, across different countries and cultures. It is **much cheaper** than litigation in court.

- **To attempt mediation, you and the opposing party must agree to do so.** Your opposing party will have received this Information Sheet also, and will therefore know that mediation is a good option for him / her to consider.

- You and your opposing party can go for mediation **at any time**, whether before or after a case is filed in court. It is usually **better to attempt mediation early** e.g. *before* a case is filed in court so that you can save the most amount of money if the dispute is resolved through a settlement.

- **Everything that occurs in mediation is confidential and 'without prejudice'.** Therefore, you do not have to worry about what is said during the mediation process, if it proves to be unsuccessful in resolving your dispute, and you have to carry on in court, or arbitration. **Nothing arising in mediation can be used against you or the opposing party.**

- **The product of a successful mediation is a settlement agreement which can be enforced as if it were a judgment of a Singapore court, by taking certain steps, or**

under the United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as "the Singapore Convention on Mediation"), if the settlement agreement fulfils the requirements under the Convention.

- **Your lawyer can attend the mediation with you**, to help you in the process.

- The Law Society of Singapore runs a low-cost, effective Mediation Scheme, that you are encouraged to consider using. **You can obtain more information on the Law Society of Singapore Mediation Scheme by scanning this QR Code.**

(B) <u>ARBITRATION</u>:

Appointing a *neutral third party* (who is not a judge) to decide your dispute with the other party, on a confidential basis, out of court.

- Arbitration is a **consensual, flexible, informal process** in which a trained neutral person (called an arbitrator) decides the dispute for the parties, instead of a judge in court.

- Arbitration has been proven to be a **confidential and highly-effective** method of resolving disputes of all kinds, whether big or small, worldwide. The arbitration process is flexible and is set by the arbitrator and the parties, based on the needs of the particular case. If the process is designed correctly by the arbitrator and the parties (through discussions and consent) it can be **much faster and cheaper** than litigation in court.

- **To go for arbitration, you and the opposing party must agree to do so.** Your opposing party will have received this Information Sheet also, and will therefore know that arbitration is a good option for him / her to consider.

- **Everything that occurs in arbitration is confidential. It is also final and binding on the parties. Usually, there is no right of appeal.** Unlike cases in court, there are **no strict rules of evidence**. **Rules of civil procedure also do not apply.** This makes the process **more flexible and less complicated** than going to court.

- **The product of an arbitration is an award, which can be enforced as if it were a judgment of a court, in Singapore and abroad, by taking certain steps.**

- **Singapore arbitration awards can be enforced in over 160 countries world-wide because of an international treaty i.e. the New York Convention 1958.** Awards are much more readily enforced world-wide, in contrast to judgments of a Singapore court.

- **Your lawyer can attend and argue at the arbitration,** just as he would, in court. **If you win, you are likely to get a higher proportion of your lawyer's fees back from the opposing side, as compared with going to court.**

- The Law Society of Singapore runs a low-cost, effective Arbitration Scheme, that you are encouraged to consider using. **You can obtain more information**

on the Law Society of Singapore Arbitration Scheme by scanning this QR Code.

(C) <u>NEUTRAL EVALUATION OR DETERMINATION</u>:
Appointing a *neutral third party* (who is not a judge) to *evaluate* or *determine* your dispute with the other party, on a confidential basis, out of court.

- Neutral Evaluation and Determination are **confidential, quick and temporary summary processes** in which a trained neutral person (called a Neutral) provides an evaluation or determination of the dispute pending a final decision by a court or arbitral tribunal. It is **suitable for all types of civil disputes**.

- This is **generally speedier and less costly than litigation and arbitration** and they allow parties to have a **temporary resolution** to their dispute before the dispute is ultimately determined by a competent court or tribunal.

- **The Neutral is a lawyer**. The Neutral will make an evaluation ("**Evaluation**") or a determination ("**Determination**") based on the documents submitted or after a truncated hearing (if the parties request for it). **You can select your Neutral** by agreement of parties from the Law Society's Panel of experienced lawyers practising in various areas of law.

- Every single stage is **limited by time to ensure quick resolution**.

- An **Evaluation is advisory only**. It is the opinion of the Neutral and is not binding on the parties, except for the Neutral's decision on the costs of the neutral evaluation which is binding on the parties. A **Determination is binding until the dispute is finally determined by a competent court or tribunal**.

- The Evaluation or Determination will be given **in writing**. The Neutral will provide **reasons for the opinion or decision**.

- The Law Society of Singapore runs a neutral evaluation and determination scheme that you are encouraged to consider using. **You can obtain more information on the Law Society of Singapore Neutral Evaluation and Determination Scheme by scanning this QR Code.**

(D) <u>SMALL CLAIMS TRIBUNAL</u>:
A simple adjudication process where lay persons present their own cases (involving a certain type of dispute, and where the claim is S$20,000 or less, or up to $30,000 if both parties agree.)

- If the **claim in your case is for $20,000 or less, *and of a certain type***, you have the option of having your claim heard and decided in the Small Claims Tribunal (SCT) by commencing a claim there (if you are the claimant) or by asking the person suing you to agree to have his / her claim heard there (if you are the respondent). **Both parties can also mutually agree to raise the claim limit to S$30,000.**

- SCT claims must be filed **within 2 years** of the event giving rise to the claim.

- SCT claims and defences are **presented by the parties themselves**. Lawyers do not appear for the parties. This makes the SCT process **much cheaper** than bringing or defending a case in court. **The SCT claim can also be filed, defended, negotiated and mediated online.**

- SCT cases are heard before, and decided by, a Tribunal Magistrate. Unlike cases in the civil courts, the SCT is not bound by **strict rules of evidence. The Tribunal Magistrate adopts a judge-led approach in directing the proceedings and in determining the substantive merits of the case.** This makes the process **easier to handle for a lay person, himself**. It also results in the whole process often being **faster and less complicated** than going to court.

- **The types of cases** that can be heard before the SCT include the following :

    - A contract for the sale of goods. This includes claims arising from a contract in which goods are sold and bought in exchange for money. Examples: Suing a supplier for an unfair practice in relation to a consumer transaction or suing a supplier for non-conformity of goods.

    - A contract for the provision of services. This includes claims arising from written or oral agreements for the provision of services involving skill and/or labour in exchange for money. Examples: Suing a renovation company for failing to provide the contracted renovation service or suing a provider of spa treatments for failure to carry out the treatments.

    - A tort for damage caused to property This includes claims for losses or expenses incurred by owners of property as a result of careless, reckless or improper acts by others. This does not include claims for damage to property caused by an accident arising from or in connection with the use of a motor vehicle.

    - A hire purchase agreement which relates to an unfair practice as defined under section 4 and the Second Schedule of the Consumer Protection (Fair Trading) Act.

    - Refund of motor vehicle deposits under the Consumer Fair Trading (Motor Vehicle Dealer Deposits) Regulations 2009.

    - A contract relating to a lease of residential premises not exceeding 2 years. This excludes: leases of industrial or commercial premises and licenses of any premises for any period of time.

- The order of the Tribunal Magistrate in an SCT hearing is an order of the State Courts of Singapore, and can be enforced in the same manner as an order or judgment of the District Court.

- **You can obtain more information on the SCT from the State Courts website by scanning this QR Code.**

WHICH OPTION IS BEST FOR ME?

You should consider all of these factors and discuss them with your lawyer.

- How big is the claim?
- How much will it cost me to bring (or defend) the claim, all the way?
- How much will I get back (from what I have spent) if I win?
- How much will I need to pay (to the opposing party and to my own lawyer) should I lose?
- Would it be good to keep this dispute confidential?
- Do I need the right to enforce the outcome in a different country?

I confirm that I have read this Information Sheet and understand its contents.

_____

(Signature)

Name :

Date :

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.2.1

[Formerly PDR 2013, para 33; PDR 1989, chap 7, para 1]

ACTING AGAINST A PUBLIC AUTHORITY

As a general rule, a solicitor (as defined by the subsidiary legislation) who is a member of a public authority or any partner of or assistant employed by such solicitor should not be professionally engaged against such authority in any proceedings to which such authority is a party or in any matter in which such authority is directly interested. If exceptional circumstances justify any departure from this general rule it is the duty of the solicitor to ensure that the interests of the authority are effectively protected.

Where an advocate and solicitor is retained by the Attorney-General in the case of civil proceedings by or against the Government or a public officer, member's attention is drawn to section 24(3) of the Government Proceedings Act (Cap 121, 1985 Rev Ed).

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.2.2

[Formerly PDR 2013, para 28; PDR 1989, chap 1, para 25(a)]

ACTING FOR BOTH APPLICANT CREDITOR AND PROVISIONAL LIQUIDATOR

When a firm of legal practitioners is acting for the applicant creditors and the court appoints a provisional liquidator for the company pending the outcome of the winding-up application, it is undesirable for the legal practitioners for the applicant creditors to act also on behalf of the provisional liquidator.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.2.3

[Formerly PDR 2013, para 32; PDR 1989, chap 1, para 25(e)]

ACTING FOR BOTH COMPLAINANT AND ACCUSED

When a legal practitioner has been retained by the complainant to act for him/her in a criminal case, the legal practitioner cannot subsequently represent the accused person in his/her defence in the same case, notwithstanding that the legal practitioner concerned only obtained a certified true copy of the police report and did nothing further for the complainant.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.2.4

[Formerly PDR 2013, para 31; PDR 1989, chap 1, para 25(d)]

ACTING FOR BOTH DEBENTURE HOLDER OF A COMPANY AND RECEIVER APPOINTED BY THE HOLDER

It is not objectionable in principle for a receiver to use the same legal practitioner that acts for the appointer, the debenture holder. The receiver is almost invariably a public accountant who should be able to identify a situation that is likely to give rise to a conflict of interest between the company that he/she represents and the appointer. If there is a likelihood of conflict, then the receiver should use different legal practitioners. This aside, any conflict or likelihood of conflict should be identifiable by the legal practitioners acting for the debenture holder, and the legal practitioners can in such a situation be expected to inform the receiver accordingly and advise that he/she engages different legal practitioners.

The likelihood of conflict should be real and not fanciful, and in this respect, 'potential' conflict is not the true test, since potential conflict includes a possibility of conflict that can be remote.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.2.5

[Formerly PDR 2013, para 29; PDR 1989, chap 1, para 25(b)]

COUNCIL RULING: CONFLICT OF INTEREST – ACTING AGAINST FORMER CLIENT IN LTITIGATION PERTAINING TO SAME TRANSACTION

A member has queried as to whether a legal practitioner who has acted for both the mortgagor and the mortgagee in the same transaction, can subsequently act for the mortgagee in an action against the mortgagor for default of payment under the mortgage. The query was raised in relation to a transaction where the separate Certificate of Title has been issued and the mortgage had been completed before the event of default.

The Council feels that in view of the fact that a conflict of interest may arise, members should note the following advice:

> A legal practitioner who has previously acted for both the mortgagor and mortgagee should refrain from acting for either of them in litigation pertaining to the same transaction irrespective of whether:
>
> (a) the loan has been fully disbursed;
>
> (b) separate title has been issued for the property; and
>
> (c) the transfer in favour of the purchaser/mortgagor has been perfected.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.2.6

[Formerly PDR 2013, para 30; PDR 1989, chap 1, para 25(c)]

COUNCIL RULING: CONFLICT OF INTEREST – MORTGAGOR / MORTGAGEE

A member acting for a bank (the 'Plaintiff') posed the following problem, namely his client had granted banking facilities to *A* and *B* previously. The banking facilities were secured by a mortgage of a property. The subject property had since been disposed of long ago by *A* and *B*. Notwithstanding the discharge of the mortgage of the aforesaid property, there was still an outstanding sum of money due from *A* and *B* under their general balance of account with the Plaintiff.

The Plaintiff had instructed him to commence legal action against *A* only and accordingly the sum of $2,577.86 together with interest was claimed.

The Plaintiff then obtained judgment by way of summary judgment under Order 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) against *A* up to the date of judgement obtained, no objection was made by another firm of legal practitioners ('*C*') on grounds of conflict of interest in respect of him acting on behalf of the Plaintiff in the matter. There had been no stay of execution of the judgment obtained by the Plaintiff. Accordingly, on behalf of the Plaintiff he had filed bankruptcy proceedings against *A*. He had now received a fax letter from *C* drawing his attention to the Practice Circular No 17 of the Law Society dated 30 July 1988 under the heading "Conflict of Interest" which stated *inter alia:*

> "A [legal practitioner] previously acting for the mortgagor and mortgagee should refrain from acting for either parties in litigation pertaining to the same transaction irrespective of whether the loan has been fully disbursed."

The member had replied to *C* explaining that the aforesaid Practice Circular was qualified in the sense that a legal practitioner acting previously for the mortgagor and mortgagee is disqualified from acting for either of them in litigation pertaining to the mortgage transaction and not in his case where the claim is based on the outstanding balance of the current account between the Plaintiff and *A*. Albeit that the current account had been secured by a mortgage of a property in which the member acted for *A*, *B* and the Plaintiff. *C* on behalf of *A* filed an appeal against the judgment.

The Council had replied stating that in the circumstances described in his said letter, the Council was satisfied that it was entirely proper for the member to act for the Plaintiff in the recovery proceedings, notwithstanding the fact that he had previously acted for the mortgagor and mortgagee in the securing of the banking facilities by a mortgage of the mortgagor's property. There was no general rule that a legal practitioner who had acted for some person either before or after litigation began could not in any case act for the opposite party. In each case, the court has to be satisfied that mischief was result from the legal practitioner so acting.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.3.1

[Formerly PDR 2013, para 22; PDR 1989, chap 1, para 19(b)]

COPIES OF DOCUMENTS

It is advisable for the outgoing legal practitioner to make a copy of the documents before handling the matter over to the incoming legal practitioner. However, the outgoing legal practitioner must bear the costs of making copies of such documents as it is for his/her own protection in anticipation of future complications.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.3.2

[Formerly PDR 2013, para 16; PDR 1989, chap 1, para 15(b)]

LEGAL PRACTITIONER ON RECORD

If in any civil proceeding the name of any legal practitioner appears on the record for any party, no other legal practitioner shall knowingly agree to act or continue to act for such party in such proceeding unless he/she has, in ignorance that such name so appears on the record, already agreed to act for such party and is unable by reason of circumstances or urgency or the like to refuse to act further to such party without exposing himself/herself to a charge of breach of professional duty.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.3.3

[Formerly PDR 2013, para 14; PDR 1989, chap 1, para 14]

NO TAKING OVER BRIEF UNTIL RETAINER DETERMINED AND BASIS OF SECOND OPINION

A legal practitioner should not act in a matter in place of another legal practitioner whom he/she knows has been retained until that retainer has been determined by the client. While a legal practitioner (*A*) may give a second opinion of a case to a client of another legal practitioner (*B*), with or without the knowledge of *B*, he/she must not improperly seek to influence the client to terminate the relationship between the client and *B*.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.3.4

[Formerly PDR 2013, para 101; PDR 1989, chap 7, para 37]

TRANSFER OF CLIENTS' MONEYS ON DISSOLUTION

In the event of dissolution of a law practice, all clients should be notified and all clients' moneys should be refunded or dealt with in accordance with the instructions of the clients. No member of the dissolved law practice is entitled to retain clients' moneys without the permission of the clients.

Where files are distributed amongst the previous management of the dissolved law practice (eg, ex-partners or ex-directors), clients' instructions should be sought regarding such distribution.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 7.3.1

[Formerly GN 2013, para 10; Council's Guidance Note 2 of 2012]

GUIDELINES FOR HANDLING OF CLIENTS' FILES WHEN A LEGAL PRACTITIONER LEAVES A LAW PRACTICE TO PRACTISE IN ANOTHER LAW PRACTICE

1. This Guidance Note applies to both the law practice ('Current Law Practice') and the legal practitioner ('Exiting Legal Practitioner') who leaves the Current Law Practice with the intention to practice as an employee or member of another law practice ('New Law Practice').

2. It sets out guidelines on how the file(s) of a client(s) ('Client') of the Current Law Practice being handled by the Exiting Legal Practitioner should continue to be managed when the Exiting Legal Practitioner intends to leave the Current Law Practice.

3. The guidelines are based on the following principles:

(a) The primary consideration in all cases is that the Exiting Legal Practitioner and the Current Law Practice must act in the best interests of the Client and ensure that the Client's interests are not prejudiced by the Exiting Legal Practitioner's leaving the Current Law Practice.

(b) The Client has at all times the right to decide on the law practice that will represent the Client, which could be the Current Law Practice, the New Law Practice or a third law practice ('Third Law Practice').

(c) The Client must be promptly notified in a professional manner of the Exiting Legal Practitioner's departure and given sufficient information in order to decide on the law practice that will represent the Client.

(d) The Client is the client of the Current Law Practice and the Current Law Practice has a right to retain the Client.

(e) The Exiting Legal Practitioner must comply with all such contractual, fiduciary and confidentiality obligations that the Exiting Legal Practitioner may owe to the Current Law Practice despite leaving the Current Law Practice.

Guidelines

4. Where the Exiting Legal Practitioner intends to take the Client's file to the New Law Practice, each of the following steps should be followed.

5. The Exiting Legal Practitioner must inform the Current Law Practice first before informing the Client of the intention to leave the Current Law Practice. To inform the Client first and then the Current Law Practice would be unethical.

6. Unless agreed between the Current Law Practice and the Exiting Legal Practitioner, the Exiting Legal Practitioner must not remove lists of Clients' names and addresses or other proprietary information from the Current Law Practice.

7. The Current Law Practice and the Exiting Legal Practitioner should jointly and promptly notify the Client of the Exiting Legal Practitioner's proposed departure. If this is not possible,

the Current Law Practice or the Exiting Legal Practitioner may unilaterally notify the Client, but the notification to the Client should be professional and especially should not solicit or suggest (as the case may be) that the Client has an obligation to retain the Exiting Legal Practitioner's New Law Practice or that the Client has an obligation to stay with the Current Law Practice. The contents of the notification must be in accordance with the principles stated in paragraph 3 above.

8. If the Current Law Practice is instructed by the Client to transfer the file(s) to the New Law Practice or to the Third Law Practice, the Current Law Practice should expressly acknowledge this instruction and facilitate the transfer of the Client's file in accordance with rule 26 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015).

9. If the Current Law Practice receives no instructions from the Client to transfer the file(s) to the New Law Practice or the Third Law Practice, it is assumed that the Client intends to continue with the Current Law Practice and the Exiting Legal Practitioner must not take the Client's file to the New Law Practice or otherwise undermine the existing legal practitioner-client relationship between the Current Law Practice and the Client in any way. The Client remains the client of the Current Law Practice and the Current Law Practice must continue to represent the Client in accordance with the required professional standards.

10. In all matters concerning the procedure in paragraphs 7–9 above, it is preferable, whenever possible, that the Current Law Practice and the Exiting Legal Practitioner should communicate with each other and with the Client (whether individually or jointly) in writing rather than orally.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.4.1

[Formerly PDR 2013, para 68; PDR 1989, chap 6, para 10]

CORRESPONDENCES TO POTENTIAL CLIENTS WHERE LEGAL PRACTITIONER IS PERMITTED TO ACT FOR MORE THAN ONE CLIENT IN A TRANSACTION

In circumstances where a legal practitioner is permitted to act for more than one client in a particular transaction, the legal practitioner should be mindful of the danger of using phrases which can be construed as an invitation to employ the legal practitioner, which will infringe the rule against touting. Thus, even if the legal practitioner has been informed by his/her client that the other party wishes to retain the legal practitioner to act for him/her, it is suggested that his/her initial correspondence to the other party should take the following form:

> "I understand from my clients that they have arranged to sell to you the above property at the price of ____ subject to contract, and that you would like me to act on your behalf. While I should be happy to act for you if you so wish, I would point out that you are not bound to employ me and are entitled to instruct any other legal practitioner of your own choosing. Will you please therefore, either confirm in writing your wish that I should act for you, or let me have the name and address of the legal practitioners who will act for you."

In contrast, the use of the following sentence in a letter, without more, infringes the rule against touting as it does not make clear that the recipient is entitled to instruct a legal practitioner of his/her own choice:

> "If you want us to act for you, please instruct us accordingly, or if you have your own legal practitioners, please instruct them to contact us."

If a legal practitioner for one party does not know who is to act for the other party to a conveyance, the letter to the other party should take the following form (according to Sir Thomas Lund, "Guide to the Professional Conduct and Etiquette of Solicitors" (The Law Society, 1960) at page 7):

> "I understand from my clients that they have arranged to sell to you the above property at the price of _____ subject to contract. In order that the matter may proceed, will you please let me know the name and address of the [legal practitioners] who will be acting for you."

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.4.2

[Formerly PDR 2013, para 6; PDR 1989, chap 1, para 8(b)]

RESERVATION OF RIGHTS IN WARRANT TO ACT OR LETTER OF ENGAGEMENT

Any difficulty to a solicitor seeking to terminate his/her retainer may well be averted by inserting an appropriate reservation of right in his/her client's Warrant to Act or Letter of Engagement. This reservation could be to the effect that the legal practitioner may at any time discharge himself/herself based on the grounds set out in rule 26(5) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), while observing the obligation in rule 26(6) of the PCR 2015, to take reasonable care to avoid foreseeable harm to the client.

Without a suitable reservation of right, a legal practitioner who obtains his/her discharge may well expose himself/herself to a claim for damages in the event his/her withdrawal leads to the dismissal of his/her client's claim or the recovery of judgment against his/her client when there is a valid defence.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.4.3

[Formerly PDR 2013, para 65]

WARRANT TO ACT, LETTER OF ENGAGEMENT AND REFERRALS FROM THIRD PARTIES

A. Warrant to Act to be Signed by Each Crew Member in Maritime Wage Claims

[Formerly PDR 1989, chap 1, para 49]

When acting for clients such as ship's crew in wage claims, a legal practitioner shall obtain a Warrant to Act signed by each crew member before or as soon as practicable after the issue of an Admiralty Writ in Rem.

B. Inserting Reservation of Rights in Warrant to Act

[Formerly PDR 1989, chap 1, para 8(b)]

Any difficulty to a legal practitioner seeking to terminate his/her retainer may well be averted by inserting an appropriate reservation of right in his/her client's Warrant to Act. This reservation could be to the effect that the legal practitioner may at any time discharge himself/herself based on the grounds set out in rule 26(5) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), while observing the obligation in rule 26(6) of the PCR 2015 to take reasonable care to avoid foreseeable harm to the client.

Without a suitable reservation of right, a legal practitioner who obtains his/her discharge may well expose himself/herself to a claim for damages in the event his/her withdrawal leads to the dismissal of his/her client's claim or the recovery of judgment against his/her client when there is a valid defence.

C. Request for Written Warrants to Act

[Formerly RUL/1/1992]

A law practice (*A*) must accept another law practice's (*B*) written representation that the latter is authorised to act for a particular client on the face value of the representation made, unless there are good reasons for suspecting that the representation has been falsely made.

Should *A* insist that *B* disclose its Warrant to Act despite having received a written representation from *B* that it has authority to act for the particular client, *A* should provide its reasons to *B* for suspecting that the representation has been falsely made.

A legal practitioner (*X*) who receives a request from another legal practitioner (*Y*) to disclose his/her Warrant to Act is entitled to ask *Y* to provide his/her reasons for suspecting that the representation is false. After *Y* has provided his/her reasons for suspecting that the representation is false, *X* should, as a matter of course, disclose his/her Warrant to Act. Where an action has been commenced in court, no privilege attaches *ipso facto* to a Warrant to Act.

D. Code of Practice in Non-injury and Personal Injury Motor Accident Cases

[Formerly Council's Practice Direction 6 of 2009]

Part D of this Practice Direction sets out a code of practice for legal practitioners concerned with the making or commencement of any claim or action (for damages or otherwise) in non-injury and personal injury motor accident cases, and in respect of the negotiation, compromise, settlement or conduct of that claim or action. Part D of this Practice Direction:

(a) consolidates and highlights certain ethical obligations on Warrants to Act and providing generally applicable to all legal practitioners in contentious matters;

(b) establishes the ethical parameters of agreements entered into by legal practitioners with third parties for referral of work in non-injury and personal injury motor accident cases; and

(c) complements the existing legislative regime under the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') and the PCR 2015.

1. Warrants to act verifying identity of the client before acting

The legal practitioner or law practice must comply with the requirements for the verification of the identity of the client or the principal client set out in the Council's Practice Direction on the Prevention of Money Laundering and Financing of Terrorism (Practice Direction 3.2.1).

(a) Accepting instructions from the client to act

After a legal practitioner or a law practice has properly verified the identity of the client or the principal client, the legal practitioner or law practice may accept instructions from the client or an agent on behalf of a principal client to act in the matter. In the latter case, the legal practitioner must ensure that the agent has the required authority to give instructions on behalf of the principal client and, in the absence of evidence of such authority, the legal practitioner must, within a reasonable time thereof, confirm the instructions with the principal client: rule 5(5) of the PCR 2015.

It is in the interests of both the solicitor (as defined by the subsidiary legislation) and the client that the solicitor or the law practice should obtain written instructions of the client or his/her agent to act in the matter. If a solicitor or a law practice has received oral instructions from the client or his/her agent to act in the matter, the solicitor or law practice must confirm the oral instructions subsequently in a written Warrant to Act: Order 64, rule 7(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ('RoC'). The absence of such a Warrant to Act is, if the solicitor's authority to act is disputed, *prima facie* evidence that he/she has not been authorised to represent such party: Order 64, rule 7(2) of the RoC.

In the context of a third party referring a client to a legal practitioner or a law practice, the legal practitioner or law practice, as the case may be, must comply with all the requirements in rule 39(2) of the PCR 2015. In particular, the legal practitioner or law practice must "communicate directly with the client to obtain or confirm instructions when providing advice and at all appropriate stages of the transaction": rule 39(2)(*g*) of the PCR 2015. The legal practitioner or law practice must not accept instructions from the third party to act in the matter.

(b) Execution of the Warrant to Act by the client

It is in the interests of the legal practitioner to explain properly the nature, contents and scope of the Warrant to Act directly to his/her client, and not to delegate this duty to a staff of his/her law practice. Failure to provide the client with a proper explanation may result in disputes over what the client knew or was told when the Warrant to Act was executed, which may attract allegations of misconduct. Further, the terms of any contentious fee agreement between the legal practitioner and the client could be deemed unfair or unreasonable and such an agreement may be declared void: section 113(4) of the LPA. As a matter of precaution and prudence, it is in the interests of the legal practitioner to maintain comprehensive and contemporaneous attendance notes of the legal practitioner's explanation to the client when the Warrant to Act is executed.

In the context of a third party referring a client to a legal practitioner or a law practice, the legal practitioner or law practice, as the case may be, is prohibited from leaving blank forms of Warrants to Act with the third party or allowing the third party to secure a client's signature to a Warrant to Act The arrangements for the explanation and execution of a Warrant to Act must be made directly by the legal practitioner or the law practice with the client: rule 39(2)(*g*) of the PCR 2015. For the reasons stated in the immediate paragraph above, it is in the interests of the legal practitioner to ensure that the Warrant to Act is executed by the client in the legal practitioner's presence.

(c) Disclosure of the Warrant to Act to a third party

In the interests of efficacy, requests for disclosure should not be made unnecessarily. A law practice must accept another law practice's written representation that the latter is authorised to act for a particular client on the face value of the representation made, unless there are good reasons for suspecting that the representation has been falsely made: see Part C of this Practice Direction on "Request for Written Warrants to Act".

2. Agreements with third parties for referral of work

For referral of a client by a third party to a legal practitioner or a law practice, the legal practitioner or law practice, as the case may be, must comply with all the requirements in rule 39(2) of the PCR 2015.

In addition, the Council is of the view that the ethical requirements stipulated in rule 40 of the PCR 2015 for agreements for referrals of conveyancing services should similarly apply to agreements entered into by a legal practitioner or a law practice with third parties for referral of non-injury motor accident or personal injury motor accident work. For such agreements, the legal practitioner or law practice, as the case may be, shall ensure that the agreement is made in writing and contains the following terms:

(a) the referror undertakes in such an agreement to comply with the PCR 2015;

(b) the legal practitioner or law practice shall not:

  (i) accept from the referror the payment of commission, referral fee or any other form of consideration; or

  (ii) reward the referror by the payment of commission, referral fee or any other form of consideration;

(c) the legal practitioner or law practice must be entitled to terminate the agreement immediately if there is reason to believe that the referror is in breach of any of the terms of the agreement;

(d) any publicity of the referror (whether written or otherwise), which makes reference to any service that may be provided by the legal practitioner or law practice must not suggest any of the following:

  (i) that the service is free;

  (ii) that different charges for the service would be made according to whether or not the client instructs the particular legal practitioner or law practice; or

(iii) that the availability or price of other services offered by the referror or any party related to the referror are conditional on the client instructing the legal practitioner or law practice; and

(e) the referror must not do anything to impair the right of the client not to appoint the legal practitioner or law practice or in any way influence the right of the client to appoint the legal practitioner or law practice of his/her choice.

The legal practitioner or law practice must terminate the agreement immediately if the referror is in breach of any term referred to in the immediate paragraph above or if there is reason to believe that the legal practitioner or law practice is in breach of such term.

If the legal practitioner or law practice is satisfied that the referror has inflated the claim or was complicit in a staged accident or otherwise committed any fraud, dishonesty, crime or illegal conduct, the legal practitioner or law practice has a duty to advise the client of the same and the legal consequences of misleading the court. The legal practitioner or law practice should also advise the client to require the referror to make the appropriate rectification or take other corrective action. If the client refuses to accept the advice or if the referror refuses to make the appropriate rectification or take other corrective action, the legal practitioner or law practice, as the case may be, must terminate the agreement immediately and cease to act in the matter. When advising the client, the legal practitioner must not knowingly assist in or encourage any fraud, dishonesty, crime or illegal conduct. The legal practitioner must also, at all times, comply with his/her ethical obligations not to knowingly mislead or attempt to mislead the court or tribunal: see rule 9 of the PCR 2015.

Where the legal practitioner or law practice has terminated the agreement, the legal practitioner or law practice, as the case may be, may continue to act in matters the legal practitioner or law practice was instructed before the termination but should not accept any further referrals from the referror.

3. Providing welfare assistance to clients

Legal practitioners should bear in mind “Providing Welfare Assistance to Clients” (Guidance Note 7.4.2), where Council advised that lending moneys by a law practice to clients will put a legal practitioner in a position of personal conflict of interest as the legal practitioner will have a creditor/debtor relationship with his/her client and the debt would be repaid only if the client’s case was either settled or paid. Council also advised that if the client’s case was pending litigation, allegations of maintenance and champerty could be made against the law practice. Law practices should direct clients who are foreign workers to appropriate organisations that can provide welfare assistance to them.

E. Compliance with Rule 17 of the PCR 2015

Although a legal practitioner is not required to advise his/her client in writing of the matters stated in rule 17 of the PCR 2015, the Law Society recommends that legal practitioner draw up a letter of engagement to incorporate the advice required to be given under these rules. c

F. Warrant to Act Containing Privileged Material
[Ethics Committee Guidance: 10 March 2008]

Where the Warrant to Act contains privileged material, it may nevertheless be disclosed by expunging that material before disclosure. Alternatively, the solicitor should obtain a further brief warrant that does not contain such material for purposes of disclosure: *Tung Hui Mannequin Industries v Tenet Insurance Co Ltd and others* [2005] 3 SLR(R) 184.

[Note: It is therefore good practice to keep the Warrant to Act a separate document from the fee agreement, so that it can be readily furnished without having to disclose confidential information about fee arrangements.]

G. Client Engaging Two Law Practices
[Ethics Committee Guidance: 12 December 2008]

There is nothing in the LPA, PCR 2015 or the Society's Practice Directions that prohibits a client from engaging two law practices to act in a matter. If both law practices have properly advised the client on their terms of engagement, including their respective costs for acting in the matter, and the client consents to these terms, both law practices may then proceed to act for the client in the matter. Each law practice would have to comply with their ethical obligations under their respective retainers with the client, including the confidentiality requirements set out in rule 6 of the PCR 2015 and all rules relating to conflict of interest.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

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.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 7.4.2

[Formerly GN 2013, para 2; Council's Guidance Note 1 of 2004]

PROVIDING WELFARE ASSISTANCE TO CLIENTS

1. On 5 October 2004, Council gave guidance to two law practices that enquired on the extent of welfare assistance they could give their clients whilst they pursued their legal claims. The law practices wished to lend moneys to their clients who were foreign workers on special passes to help them meet their daily living expenses.

2. Council advised the practices that lending moneys to clients will put a lawyer in a position of personal conflict of interest as the lawyer will have a creditor/debtor relationship with his client and the debt owed in this case would be repaid only if the client's case was either settled or paid. Council also advised the practices that if the matter was pending litigation, allegations of maintenance and champerty could be made against the practice.

3. Law practices should direct clients who may require welfare assistance to appropriate organisations that can provide such assistance to them.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.1.1

[Formerly PDR 2013, para 51; PDR 1989, chap 1, para 54]

ALLEGATION AGAINST ANOTHER LEGAL PRACTITIONER IN COURT DOCUMENTS

A. Rationale of Rule 29 of the Legal Profession (Professional Conduct) Rules

The purpose of rule 29 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015') is to ensure that a legal practitioner (*A*) gives another legal practitioner or his/her legal practice (*B*) an opportunity to provide the court a full and balanced picture of the allegation made against *B* when *B*, not being a party to the proceedings, would not have had an opportunity to respond. A legal practitioner or his/her legal practice who is a party to the proceedings would be given the right to respond to the allegation as a party. After *B* gives his/her reply, *A* may then withdraw or modify his/her allegation.

B. When Rule 29 of the Legal Profession (Professional Conduct) Rules Does Not Apply

["Allegations against Fellow Solicitors", Singapore Law Gazette, January 2000]

Rule 29 of PCR 2015 does not apply:

(a) when *B* is a party to the proceedings;

(b) where a client in a criminal suit makes allegations against *B* who is the victim; or

(c) when an allegation is made against *B* who is a non-practising legal practitioner.

C. "Made Against another Legal Practitioner"

["Allegations against Fellow Solicitors", Singapore Law Gazette, January 2000]

If an allegation is made against a non-qualified staff of the law practice [note: in particular, an allegation which goes towards the processes, oversight or management of the firm], rule 29 of PCR 2015 may apply unless the allegation is personal to the staff.

D. "Opportunity to Respond to the Allegation"

[Ethics Committee Guidance: 8 March 2000]

Under rule 29 of PCR 2015, it is *A*'s duty to provide *B* with sufficient particulars of the allegation against him/her to enable him/her to fully respond to the allegation. Whether the particulars given are sufficient will depend on the facts of each case, *eg*, whether it would be necessary to forward all the exhibits in an affidavit containing the allegation in order to comply with rule 29 of PCR 2015.

It would be prudent practice for *A* to forward to *B* the draft document containing the allegation so that *B* is cognisant about the allegation being put before the court.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.3.1

[Formerly PDR 2013, para 36; PDR 1989, chap 1, para 27]

COMMUNICATION WITH FORMER CLIENT

As between members of the profession, one's word should be one's bond and a legal practitioner's word should be accepted as such by other legal practitioners unless there is strong ground to doubt the integrity of that legal practitioner.

In normal circumstances, it should not be necessary to obtain confirmation from one's former client before parting with money or property or document of a former client to the new legal practitioner that he/she has instructed to act for him/her. It is improper for a former legal practitioner to communicate with the client who has left him/her which would amount to a breach of rule 7 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015), even if the communication is only with the view to obtaining confirmation of what the other legal practitioner has written to that legal practitioner.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.3.2

[Formerly PDR 2013, para 85; PDR 1989, chap 7, para 9]

QUOTING OF REFERENCES IN CORRESPONDENCE

Representations have been received from members of the Bar that when writing to one another, members of the Bar have omitted to quote the other legal practitioner's file reference, although they generally asked for their own file references to be quoted in correspondence.

Members of the Bar are kindly asked to co-operate in this matter.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.4.1

[Formerly PDR 2013, para 20; PDR 1989, chap 1, para 17]

LEGAL PRACTITIONERS' CORRESPONDENCE IN SEALED COVERS

Letters and all copies must be enclosed in sealed covers before they are despatched. Sending letters to other legal practitioners without the letters being enclosed in sealed covers is unsatisfactory as there is a potential risk of the contents of the letters which in most cases are confidential, being read by persons other than those to whom the letters are addressed.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.1

[Formerly PDR 2013, para 86; PDR 1989, chap 7, para 11(b)]

ACKNOWLEDGEMENT OF DOCUMENTS

Members of the profession are reminded that if their law practices are used as registered offices of their clients, they should accept and acknowledge services of all court documents and other correspondence served on their clients.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.2

[Formerly PDR 2013, para 15; PDR 1989, chap 1, para 15(a)]

ADVISING A FRIEND WHO IS A CLIENT OF ANOTHER LEGAL PRACTITIONER

If a friend of a legal practitioner (*A*) discusses a matter with *A* and *A* is not acting for any party in the matter and is informed that his/her friend is represented by another legal practitioner (*B*), it would be a gross discourtesy for *A* to comment on the advice tendered by *B*. However, it would not be improper for *A* to suggest to his/her friend that he/she might wish to discuss certain aspects of the matter with *B* in order that *B* can advise him/her on those aspects of the matter. Nevertheless, it would not be proper for *A* to discuss the matter further than that with his/her friend, as otherwise the relationship of mutual confidence and trust which exists between his/her friend and *B* would necessarily be disturbed.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.3

[Formerly PDR 2013, para 21; PDR 1989, chap 1, para 18]

DRAFT DOCUMENTS

A legal practitioner shall comply with the requirements of common courtesy in dealing with draft documents.

Amendments should be made on the draft clearly showing the original and the amendment. One established method is to underline the additions and cross out the deletions but there may well be other appropriate methods.

Circumvention of the above requirements is not justified by delivering the amended version to the client for the client to deliver to the other legal practitioner or his/her client.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.4

[Formerly PDR 2013, para 102; Council's Ruling 3 of 1996]

LEGAL PRACTITIONER ON RECORD NOT ENTITLED TO REFUSE SERVICE OF DOCUMENTS

Legal practitioners on record are not entitled to refuse acceptance of service of any documents. They may, however, apply to strike off, expunge or in any way deal with the dilatory aspect of the service or the filing.

Service by fax is by consent only and service can be effected by leaving documents at the office of the legal practitioner on record if the legal practitioner refuses to accept service.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.5

[Formerly PDR 2013, para 64; Council's Practice Direction 5 of 2009]

OBTAINING EVIDENCE OF A LEGAL PRACTITIONER'S MISCONDUCT BY ENTRAPMENT OR BY ILLEGAL OR IMPROPER MEANS

This Practice Direction applies to the obtaining of evidence of a legal practitioner's misconduct by entrapment and illegal or improper means. It adopts, with necessary modifications, the definitions of the two modes of obtaining such evidence by the Court of Appeal in *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 at page 389, paragraph 27, as follows:

> ""Entrapment" involves luring or instigating the [legal practitioner] to commit an offence [or a breach of the rules of professional conduct] which otherwise, or in ordinary circumstances, [he/she] would not have committed, in order to prosecute [him/her]. Entrapment invariably entails unlawful conduct by an *agent provocateur,* in the form of abetment of the offence by instigation or intentionally aiding the [legal practitioner] to commit the offence [or a breach of the rules of professional conduct]. However, obtaining evidence illegally or improperly does not necessarily involve any instigation or inducement on the part of the agent."

There have been a number of disciplinary cases in the past few years which revealed that one or more legal practitioner(s) had hired private investigators to obtain evidence of touting by another legal practitioner in a different law practice suspected of procuring conveyancing work from real estate agents by giving referral fees. A common issue raised in these cases was whether such evidence had been obtained by entrapment or by illegal or improper means. In most of these cases, the court found that such evidence had not been obtained by entrapment or by illegal or improper means.

However, where a legal practitioner ('Procurer') obtains evidence of another legal practitioner's misconduct by entrapment or by illegal or improper means, whether directly or indirectly, a number of ethical issues are raised:

(a) The Procurer is subject to "the same standards of conduct under the disciplinary code and also the law": *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at page 264, paragraph 59. If the Procurer is also the *agent provocateur* and is "guilty of wrongdoing, he/she should also be subject to the ordinary processes of the law, like any other offender or tortfeasor, including disciplinary proceedings": *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 at page 399, paragraph 52.

(b) The Procurer's conduct, whether directly or indirectly, in instigating or intentionally aiding another legal practitioner to commit an offence or a breach of the rules of professional conduct is a breach of his/her obligation to treat his/her colleagues with courtesy and fairness under rule 7(2) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015). The Procurer's conduct is as objectionable as the ensuing breach committed by that legal practitioner.

(c) The Procurer's conduct also derogates from the dignity of the legal profession and adversely affects the standing and perception of the legal profession in the eyes of the public. If a legal practitioner becomes aware that another legal practitioner has committed an offence or a breach of the rules of professional conduct, he/she should

lodge a complaint with the Law Society in accordance with established procedures, instead of resorting to entrapment or illegal or improper means to obtain evidence about the other legal practitioner's misconduct.

(d) The Council also understands that a legal practitioner's act of obtaining evidence of another legal practitioner's misconduct by entrapment is viewed as deceptive conduct in two other foreign jurisdictions.

In view of the above, the Council takes the position that it is improper for a legal practitioner to obtain evidence of another legal practitioner's misconduct by entrapment or by illegal or improper means, whether directly or indirectly, when he/she becomes aware that the other legal practitioner has committed an offence or a breach of the rules of professional conduct. The Procurer may therefore be liable to disciplinary action under section 83 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA').

The Council's position in the immediate paragraph above should not be taken in any way to excuse the conduct of a legal practitioner who has committed an offence or a breach of the rules of professional conduct. The errant legal practitioner will be equally liable to disciplinary action under section 83 of the LPA, independent of any wrongful conduct by the Procurer. The High Court observed in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at page 264, paragraph 59:

> "[T]he law governing entrapment evidence (whether private or state-sponsored entrapment) in criminal proceedings has no application to disciplinary proceedings. The Court of Appeal in *Rayney Wong CA* also reached the same conclusion on the ground that primacy must be given to the legal profession's ethical and professional code of conduct over any illegal or improper conduct of a member of that profession in procuring evidence to uphold the values of that code. The appropriate remedy in such cases is neither to exclude the evidence nor to stay the proceedings."

As officers of the court, all legal practitioners must maintain the highest ethical standards in their professional practice and conduct and uphold the values of the legal profession.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.6

[Formerly PDR 2013, para 97; PDR 1989, chap 7, para 29]

PHONE ETIQUETTE

It is a rule of etiquette that when a legal practitioner calls another legal practitioner on the telephone, the person making the call should be ready to receive the person called when the latter answers. Persons who are called should not be kept waiting on the line until the person calling comes on the line. However, this rule need not be followed in cases where it is known that the legal practitioner called may only be reached through the intermediary of a secretary or receptionist.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.7

[Formerly PDR 2013, para 37; PDR 1989, chap 1, para 29]

PROFESSIONAL CONFERENCE

When a legal practitioner seeks a professional conference with his/her colleague, he/she shall, unless otherwise agreed, call on the legal practitioner from whom it is sought, irrespective of whether the legal practitioner seeking the conference is senior in call or not.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.8

[Formerly PDR 2013, para 4; PDR 1989, chap 1, para 7]

PROTRACTED ARGUMENTS IN CHAMBERS

Legal practitioners appearing in chambers who anticipate that their arguments would be substantial are reminded to inform the court accordingly at the commencement of the hearing and/or to ask for their case to be stood down. Subject to the court's ruling, legal practitioners should, where possible, give priority to other legal practitioners making applications for adjournment whether or not by consent. Legal practitioners are reminded to observe the above as an act of courtesy to other legal practitioners who may be waiting for their turn.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.9

[Formerly PDR 2013, para 56; RUL/2/1994]

RELATIONS WITH OTHER LEGAL PRACTITIONERS

A legal practitioner must at all times maintain his/her personal integrity and observe the requirements of good manners and courtesy towards other members of the profession or their staff, no matter how bitter the feelings between clients. A legal practitioner must not behave in a manner which is acrimonious or offensive or otherwise inconsistent with his/her position as a legal practitioner.

Likewise, a legal practitioner must not write offensive letters to members of the profession, whatever the situation between the respective clients.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.10

[Formerly PDR 2013, para 86]

SERVICE OF ORIGINATING PROCESS ON LEGAL PRACTITIONERS

A. Accepting Service of Originating Process

[Formerly PDR 1989, chap 7, para 11(a)]

Legal practitioners when writing to the effect that they have instructions to accept service, should state that they 'undertake' to accept service and enter an 'appearance' instead of the usual form of merely 'we have instructions to accept service'.

B. Effecting Service of Originating Process, Court Documents or Other Written Communications on a Client of Another Legal Practitioner

[Formerly Council's Practice Direction 4 of 2012]

Part B of this Practice Direction sets out the ethical duties of a legal practitioner ('Legal Practitioner') who represents a client ('Client') in actual or contemplated proceedings and who is instructed to effect service of originating process, court documents or other written communications ('Documents') on a client (or persons associated with the client) ('Third Party') who is represented by another legal practitioner ('Third Party's Legal Practitioner') in such proceedings.

1. Where personal service of documents is not allowed

If:

(a) the Legal Practitioner has been in communication with the Third Party's Legal Practitioner and such communication is related to the Client's actual or contemplated proceedings; and

(b) the Rules of Court or other applicable law require the Legal Practitioner to serve the Documents on the Third Party personally but permit the Legal Practitioner to serve the Documents on the Third Party's Legal Practitioner as an alternative to personal service on the Third Party, the Legal Practitioner must not serve the Documents on the Third Party personally unless:

(i) the Legal Practitioner has enquired with the Third Party's Legal Practitioner whether the latter has instructions to accept service of the Documents on behalf of the Third Party; and

(ii) the Third Party's Legal Practitioner does not confirm within three working days (excluding a Saturday, Sunday or public holiday) or such other period of time as agreed between the parties that the Third Party's Legal Practitioner has instructions to accept service of the Documents on behalf of the Third Party.

Illustrations

(A) The Legal Practitioner was involved in settlement negotiations with the Third Party's Legal Practitioner in a tenancy dispute. Subsequently, the Client instructed the Legal Practitioner to effect service of a Writ of Summons filed against the Third Party for the same matter:

(i) The Legal Practitioner serves the Writ on the Third Party at the Third Party's residential premises without making any enquiry whether the Third Party's Legal Practitioner had instructions to accept service of the Writ on behalf of the Third Party. The Legal Practitioner is prima facie in breach of paragraph B.1(b)(i) above.

(ii) Before effecting service of the Writ, the Legal Practitioner wrote to the Third Party's Legal Practitioner to enquire if the latter had instructions to accept service of the Writ on behalf of the Third Party. The Third Party's Legal Practitioner indicated that he/she would be taking the Third Party's instructions and would revert shortly on whether he/she was instructed to accept service. No reply was received from the Third Party's Legal Practitioner after two working days. The Legal Practitioner then immediately proceeded to serve the Writ personally on the Third Party without waiting for the reply from the Third Party's Legal Practitioner. The Legal Practitioner is prima facie in breach of paragraph B.1(b)(ii) above.

(B) The Legal Practitioner was involved in settlement negotiations with the Third Party's Legal Practitioner in a tenancy dispute. Subsequently, the Client instructed the Legal Practitioner to effect service of a Writ of Summons filed against the Third Party for a civil dispute unrelated to the tenancy dispute. The Legal Practitioner did not enquire whether the Third Party's Legal Practitioner had instructions to accept service of the Writ on behalf of the Third Party. The Legal Practitioner is prima facie not in breach of paragraph B.1(b)(i) above .

Where paragraphs B.1(a) and B.1(b) above apply, except where the Legal Practitioner is not permitted by the Rules of Court (Cap 322, R 5, 2014 Rev Ed) or other applicable law to serve the Documents on the Third Party's Legal Practitioner, the Legal Practitioner must inform the Third Party's Legal Practitioner in writing that personal service of the Documents on the Third Party had been effected, without delay and as soon as possible in the circumstances, having regard to the nature of the act to be done.

2. Ethical duties in effecting personal service of documents

In all cases where the Legal Practitioner effects personal service of the Documents on the Third Party, the Legal Practitioner must:

(a) limit communication with the Third Party (which includes persons associated with the Third Party) to only such communication as is necessary to effect service; and
(b) comply with his/her ethical duties *vis-à-vis* the Third Party and the Third Party's Legal Practitioner under rules 7 and 8 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015').

Illustrations

The Legal Practitioner accompanied the Client to serve a notice to evict on the Third Party, who is the tenant of the Client's premises:

(A) The Legal Practitioner behaved in a hostile manner towards the Third Party by using offensive language and threatening actions. The Legal Practitioner is prima facie in breach of paragraph B.2(a) above.

(B) The Legal Practitioner knows that the Third Party's Legal Practitioner is representing the Third Party in this matter and intends to communicate with the Third Party at the Client's premises in accordance with paragraph B.2(a) above. Pursuant to paragraph B.2(b) above, the Legal Practitioner must be mindful of his/her additional ethical duties under rules 7 and 8 of the PCR 2015.

For the avoidance of doubt, this Practice Direction is subject to:

(a) any directions of the court (including directions that the Documents are to be served on a Third Party on an urgent basis);
(b) prevailing Practice Directions by the Supreme Court and State Courts; and
(c) anything to the contrary in any written law, including the Legal Profession Act (Cap 161, 2009 Rev Ed) and the subsidiary legislation thereunder, in particular, rule 7(3) of the PCR 2015.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.7.1

[Formerly Council's Practice Direction 1 of 2010]

UNDERTAKINGS REQUIRED OF A LAW PRACTICE UNDER SECTION 78(1) OF THE LEGAL PROFESSION ACT

This Practice Direction sets out the requirements for the employment of staff under section 78(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') and the undertaking(s) that are required by the Law Society for different categories of prospective employees.

Under section 78(1) of the LPA, consent of the High Court is required if a solicitor (as defined by the Act) wishes to employ or remunerate any person, who to his/her knowledge is an undischarged bankrupt or has been:

(a) struck off a roll of legal practitioners by whatever name called otherwise than at his/her own request in Singapore or in any part of Malaysia or elsewhere and remains struck off;

(b) suspended from practising as an advocate and solicitor in Singapore or in any part of Malaysia or elsewhere and remains suspended;

(c) convicted of an offence involving dishonesty;

(d) convicted of an offence under section 33 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) or under any provision of the LPA;

(e) listed as a tout under section 39 of the Family Justice Act 2014 (Act 27 of 2014), section 62 of the State Courts Act (Cap 321, 2007 Rev Ed) or section 73 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed); or

(f) a person in respect of whom an order under section 78(4) of the LPA has been made.

An application under section 78(1) of the LPA is required to be made by originating summons and served on the Law Society of Singapore and the Attorney-General's Chambers. The application should be supported by (i) an affidavit of the sole proprietor, managing partner or managing director of the law practice ('Employer'); and (ii) an affidavit from the prospective employee.

The originating summons should provide for a prayer for the court to make an order as follows:

> "… for an order as appears in the draft thereof enclosed herewith. Any further or other orders[.]"

Based on past High Court decisions in section 78(1) applications, the Council of the Law Society would require the law practice (namely, the sole proprietor or all the partners or directors) to give the following undertakings which must be incorporated in the Employer's affidavit and the Order of Court.

A copy of the Law Society's draft Order of Court is annexed to this Practice Direction:

(a) Where the prospective employee is a person who has been struck off the roll of legal practitioners or suspended from practising as specified in sections 78(1)(*a*) and 78(1)(*b*) of the LPA:

Undertakings

That the prospective employee:

(i) would perform only the scope of work as [*position employed*], [*to set out scope of work*] and that such work would be duly supervised by the law practice's solicitors; and

(ii) would not have dealings with the law practice's money, whether it be in respect of clients' accounts or office accounts or otherwise.

(b) Where the prospective employee is an undischarged bankrupt or falls within the other categories as specified in sections 78(1)(*c*)–78(1)(*f*) of the LPA:

Undertaking

That the prospective employee would not have dealings with the law practice's money, whether it be in respect of clients' accounts or office accounts or otherwise.

Notwithstanding the above, the Society may require additional undertaking(s) to be given by the law practice as may be appropriate depending on the circumstances of the case.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.8.1

[Formerly PDR 2013, para 10; PDR 1989, chap 1, paras 12(b) and 40]

RESPONSIBILITY FOR THIRD PARTY FEES

A. Witnesses' Expenses

Where a legal practitioner calls a witness to give evidence on behalf of his/her client, he/she shall, before calling upon the witness, make it clear to the witness concerned that he/she will not be personally responsible for payment of the disbursements and expenses which the witness is allowed or entitled to under the law. The legal practitioner should for his/her own protection either satisfy himself/herself that his/her client is willing and able to pay those disbursements and expenses, or if he/she has no such assurance, obtain payment from his/her client in advance of an amount sufficient to cover the expenses.

Where a legal practitioner directs a client to a foreign colleague, he/she is not responsible for the payment of the latter's charges, but neither is he/she entitled to a share of the fee of the foreign colleague.

See also rule 12(8) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015').

B. Fees of Professionals Who Are Not Legal Practitioners

Rule 7(5) of the PCR 2015 requires a legal practitioner who appoints another legal practitioner to pay or ensure the payment of the latter's fees unless both legal practitioners agree otherwise.

Members are not professionally liable for the fees of other professional agents they engage on their clients' behalf when there is no reciprocal professional obligation imposed by other professional bodies, except where they have engaged another legal practitioner.

A legal practitioner is therefore under no obligation to personally pay the professional fees of another professional who is not a legal practitioner unless by order of court. Responsibility to pay the fees falls on the client. A legal practitioner will not be liable for professional misconduct for failing to meet the fees of a professional agent engaged on a client's behalf. However, rule 7(5) of the PCR 2015 does not affect the legal practitioner's contractual liability to such agents or third parties. It is good practice to inform professional agents that their fees will be met by the client directly or, alternatively, to take sufficient monies to account to pay for the professional agent's fees.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 9.1.1

[Formerly PDR 2013, para 35; PDR 1989, chap 1, para 26(b)]

COUNCIL RULING: REQUEST FOR INFORMATION

Various authorities, such as the Comptroller of Income Tax, Commercial Affairs Department, and Official Assignee have in recent years called upon members of the Bar to supply certain particulars or to produce certain documents in respect of matters which the solicitors (as defined by the Act) in question were acting for the client.

The requests by these authorities were made pursuant to their powers under the relevant legislation.

The Council's stand is that it is a legal practitioner's ethical duty to satisfy himself/herself that the power invoked exists and has been validly exercised, and to make the necessary submissions on the client's behalf (in the absence of the client's instructions to the contrary) if there is anything more than a frivolous argument that these conditions are not met if the particulars or documents sought are protected by legal professional privilege.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 9.1.2

[Formerly PDR 2013, para 27; PDR 1989, chap 1, paras 24(a)–24(d)]

LETTERS THREATENING CRIMINAL PROCEEDINGS / OFFENSIVE LETTERS

A legal practitioner shall not threaten the institution of any criminal proceedings against a person who has failed to admit or satisfy a civil claim made against him/her. It is improper for a legal practitioner's letter to state that his/her clients "may consider lodging a report with the police with the view of the arrest of any person for an offence under the Penal Code". Although a criminal offence may have been disclosed, that in itself is no justification for bringing pressure to bear for the recovery of a civil debt, irrespective of who the defendant is.

It is also improper for a legal practitioner to communicate in writing or otherwise a threat of criminal proceedings in order to achieve a stated objective in any circumstance, for example, to compel a witness to attend at the solicitor's office to give a statement or to sign a written statement despatched to him/her.

However, it is not improper for a legal practitioner to communicate with a party requiring him/her to comply with a particular order, enjoinment or statutory provision, and state that failure to do so will result in that party being liable to an offence or penalty. It is further permissible for the legal practitioner to identify the offence or penalty under reference.

The Council has received complaints relating to offensive language used by legal practitioners to members of the public and to clients of other legal practitioners.

We reproduce below the relevant text of the Law Society of Ireland's "A Guide to Good Professional Conduct for Solicitors" (3rd Ed, 2013) at page 52:

> "**6.8 Writing Offensive Letters**
> A solicitor, while acting for a client or otherwise, should not use insulting language or indulge in acrimonious correspondence."

The Council is of the view that the use of offensive or insulting language is unbefitting conduct for a legal practitioner.

It is unbefitting conduct for a legal practitioner to write letters containing threats of criminal proceedings to coerce the other party to act in accordance with the legal practitioner's demands or into making a statement in favour of his/her client's case. The use of insulting and threatening language are neither in the interests of the client nor conducive to the maintenance of the good name of the profession.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 9.1.3

[Formerly PDR 2013, para 34; PDR 1989, chap 1, para 26(a)]

PROFESSIONAL SECRECY AND PRIVILEGE

All oral or written communications are privileged, whether they be letters, deeds, bills of costs, entries, statements, or any other communications made to the legal practitioner in the normal course of professional employment, including information obtained by him/her in collecting evidence on behalf of a client.

The privilege applies to communications whether they are made directly or indirectly to the legal practitioner by his/her client, provided they are made to him/her in his/her professional capacity and in the legitimate course of his/her professional employment, even though they do not relate to a cause in progress or even in contemplation at the time the information is communicated.

Privileged information concerning conveyancing transactions is in the same class as privileged information in other cases.

No privilege attaches to the following classes of information:

(a) Any information which is not confidential in nature.

(b) Facts which are patent to the senses, for example, the date on which a legal practitioner was first instructed, the fact that the client executed a particular deed, or that the legal practitioner witnessed that deed.

(c) Communications which client has instructed his/her legal practitioner to repeat to a third party provided the communication to the third party was not intended to be confidential.

(d) Record of public proceedings.

(e) Where several parties employ a common legal practitioner, communications are not privileged as between these parties, if they had been made to the legal practitioner in his/her common capacity.

(f) Communications made to a legal practitioner in furtherance of a fraud or crime, notwithstanding the fact that the legal practitioner might not have been aware of the criminal or fraudulent purpose at the time the communications were made. However, this does not apply to communications made to a legal practitioner for the purpose of a defence in criminal proceedings; such communications are privileged, as long as they are not made in furtherance of a criminal purpose.

The privilege is not the legal practitioner's but the client's and accordingly the client can restrain the legal practitioner from making disclosure or he/she can waive the privilege. Until the client has waived the privilege, it is the legal practitioner's duty, if he/she is requested to make disclosure, to claim the privilege. The duration of the privilege is forever.

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 10.1.1

THIRD-PARTY FUNDING

1. This Guidance Note takes effect on 25 April 2017.

2. This Guidance Note sets out best practices for lawyers who refer, advise or act for clients who obtain third-party funding. It is intended as a guide only and is neither exhaustive nor legal advice.

3. Various entities, like the Singapore International Arbitration Centre ('SIAC') and the Singapore Institute of Arbitrators ('SIArb'), have issued related guidelines on third party funding in Singapore. We recommend that legal practitioners should review all of these guidelines together to obtain a comprehensive overview of current issues pertaining to third-party funding in Singapore.

A. Introduction and Overview of Legislative Amendments

4. Third-party funding involves a commercial funder agreeing to pay some or all of the claimant's legal fees and expenses.

5. Should the claimant succeed, the funder takes a share of any sum recovered from the claim's resolution. The funder's return is often calculated as a percentage share of the recovery or as a multiple of the amount the funder invests. The funder may also agree to bear any adverse costs liability and provide security for the respondent's costs.

6. If the claim fails, the funder often receives nothing, and remains liable for the claimant's legal fees and any adverse costs it has agreed to bear.

7. The Civil Law (Amendment) Act 2017 (No 2 of 2017) came into force on 1 March 2017. The new sections 5A and 5B of the Civil Law Act ('CLA') now provide that:

   (a) the common law torts of maintenance and champerty are abolished (section 5A(1) of the CLA).

   (b) in prescribed classes of dispute resolution proceedings, contracts providing for a qualifying third-party funder to fund a party's costs are not illegal or contrary to public policy (section 5B(2) of the CLA).

   (c) third-party funders must meet and continue to satisfy certain requirements to become qualifying third-party funders (section 5B(3) of the CLA). Otherwise, the funder's rights under the third-party funding contract are not enforceable by action (section 5B(4) of the CLA). This does not prejudice any other party's rights as against the third-party funder under the funding contract (section 5B(7) of the CLA).

8. These prescribed classes of dispute resolution proceedings are defined in regulation 3 of the new Civil Law (Third-Party Funding) Regulations 2017 (S 68/2017) ('CLR'). The prescribed classes are:

   (a) international arbitration proceedings;

   (b) court proceedings or mediation proceedings arising out of or in any way

connected with international arbitration;

(c) application for a stay of proceedings under section 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ('IAA') and any other application to enforce an arbitration agreement; and

(d) proceedings for or in connection with the enforcement of an award or foreign award under the IAA.

9. Regulation 4 of the CLR sets out the qualifying criteria which funders must satisfy and continue to satisfy:

(a) the funder carries on the principal business of funding dispute resolution proceedings; and

(b) the funder has a paid-up share capital of not less than:

(i) $5 million; or

(ii) the equivalent amount in foreign currency; or

(c) the funder has managed assets of not less than:

(i) $5 million; or

(ii) the equivalent amount in foreign currency.

10. There are also related amendments to the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') and the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'). The new section 107(3A) of the LPA states that section 107 does not prevent a solicitor from:

(a) introducing or referring a third-party funder to the client, so long as the solicitor does not receive any "direct financial benefit" from the introduction or referral (*NB,* section 107(3B) of the LPA defines "direct financial benefit" as excluding fees, disbursements and expenses payable by the client for the solicitor's legal services);

(b) advising on, drafting or negotiating a third-party funding contract for the solicitor's client; and

(c) acting for the client in any dispute arising out of the funding contract.

11. Finally, the new rules 49A and 49B of the PCR 2015 impose new duties on lawyers:

(a) When conducting any dispute resolution proceedings before a court or tribunal, a legal practitioner must disclose to the court or tribunal and every other party to those proceedings the existence of any funding contract, and the identity and address of the funder (rule 49A of the PCR 2015).

(b) Legal practitioners and law practices are prohibited from holding any share or ownership interest in a third-party funder which they have referred to a client of their practice, or which has a funding contract with a client of their practice. Legal practitioners and law practices must not receive any commission, fee or share of proceeds from such a funder (rule 49B of the PCR 2015).

12. The table below summarises the legislative changes.

Legislation	**Amendments relevant to third-party funding**
Civil Law Act	New sections 5A and 5B
Civil Law (Third-Party Funding) Regulations 2017	Regulations are new
Legal Profession Act	New subsections 107(3A) and 107(3B)
Legal Profession (Professional Conduct) Rules 2015	New part 5A (rules 49A and 49B) Amended rule 2 (definitions) and rule 3 (application of part 5A)

13. This table gives an overview of the matters addressed in this Guidance Note.

Issue	**Matters addressed**	**Part of Guidance Note**
Referring or introducing a funder to your client	You must not directly or indirectly hold any share or ownership interest in a funder which (a) you refer your client to, or (b) is funding a client of your practice. (See rule 49B(1) of the PCR 2015.) You must not receive any commission, fee or share of proceeds from such a funder (rule 49B(2) of the PCR 2015).	B
Terms in the funding agreement	<u>Confidentiality and privilege</u> You should advise your client on the applicability of common interest privilege to documents disclosed to funders. You should also advise your client to enter a confidentiality agreement with the funder before disclosing any documents to it.	C-1
	<u>Scope of funding provided</u> You should advise your client on the scope of funding provided, especially the funder's liability for adverse costs.	C-2

	Managing conflicts of interest To avoid conflicts of interest, you should advise that the funding agreement should recognize that you owe your duties to your client and not the funder. Your duty is to the party that retains you. You should advise your client that the funding agreement should let you continue to act solely for the client and not the funder, should any conflict of interest arise.	C-3
	Funder's level of involvement and dispute resolution You should advise that the agreement should set out the funder's level of involvement in decision-making, and the dispute resolution procedures should the funder and claimant disagree.	C-4
	Termination of funding agreement You should advise your client that the funder should not have a discretionary right to terminate the agreement.	C-5
Duty to disclose third-party funding	When conducting any dispute resolution proceedings, you must disclose to the court/tribunal and other parties if your client is engaged in third-party funding, and if so, the funder's identity and address (rule 49A of the PCR 2015). You should check with your client at the start of your retainer if he/she intends to engage third-party funding. You should check with your client again if you become aware of circumstances that strongly suggest he/she is engaged in third-party funding.	D

B. Referring or Introducing a Funder to your Client

14. Your obligations when referring or introducing third-party funders to your clients are set out in sections 107(3A) and 107(3B) of the LPA, and rule 49B of the PCR 2015.

15. You may introduce or refer a third-party funder to your client, so long as you do not receive any direct financial benefit from the introduction or referral (section 107(3A) of the LPA). "Direct financial benefit" does not include any fee, disbursement or expense payable by your client for your provision of legal services (section 107(3B) of the LPA).

16. The relevant parts of sections 107(3), 107(3A) and 107(3B) of the LPA are set out below:

"Prohibition of certain stipulations

107. […]

(3) A solicitor shall, notwithstanding any provision of this Act, be subject to the law of maintenance and champerty like any other person.

(3A) To avoid doubt, this section does not prevent a solicitor from —

(*a*) introducing or referring a Third-Party Funder to the solicitor's client, ***so long as the solicitor does not receive any direct financial benefit*** from the introduction or referral;

[…]

(3B) In subsection (3A) —

"direct financial benefit" ***does not include any fee, disbursement or expense payable by the solicitor's client for the provision of legal services*** by the solicitor to the client[.]"

(emphasis added)

17. Rule 49B of the PCR 2015 regulates financial and other interests in a third-party funder. The rule applies to any third-party funder:

(a) which you or your law practice has introduced or referred to a client; or

(b) which has a third-party funding contract with your client or with a client of your practice.

18. Regarding a third-party funder specified in rule 49B(1) of the PCR 2015:

(a) You must not directly or indirectly hold any share or ownership interest in that funder (rule 49B(1) of the PCR 2015).

(b) You must not receive any commission, fee or share of proceeds from that funder (rule 49B(2) of the PCR 2015).

(c) For clarity, rule 49B(2) of the PCR 2015 does not prohibit you from receiving fees, disbursements or expenses payable by your client for your provision of legal services (rule 49B(3) of the PCR 2015).

19. Rule 49B of the PCR 2015 is set out in full below:

"Prohibition against financial and other interests in Third-Party Funder

49B.—(1) A legal practitioner or a law practice ***must not, directly or indirectly, hold any share or other ownership interest*** in a Third-Party Funder —

(*a*) which the legal practitioner or law practice has ***introduced or referred to a client*** of the legal practitioner or law practice in relation to dispute

resolution proceedings; or

(*b*) which has a ***third-party funding contract*** with a client of the legal practitioner or law practice.

(2) A legal practitioner or a law practice ***must not receive any commission, fee or share of proceeds*** from the Third-Party Funder mentioned in paragraph (1).

(3) Paragraph (2) ***does not prohibit receiving any fee, disbursement or expense payable by the client mentioned in paragraph (1) for the provision of legal services*** by the legal practitioner or law practice to that client."

(emphasis added)

20. When referring or introducing a funder to your client, it is good practice to advise your client that he/she should independently assess whether to engage a funder.

C. Terms in the Funding Agreement

21. Various entities, such as the SIAC and the SIArb, have issued best practices guidelines in relation to third-party funding in Singapore.

22. When negotiating the funding agreement, it is good practice to advise your client to incorporate such guidelines as terms of the funding agreement or to ensure that the funder agrees to comply with such guidelines.

23. You should pay particular attention to the following issues in the funding agreement:

    1. Confidentiality and privilege for documents disclosed to funder.

    2. Scope of funding provided and funder's liability for adverse costs orders.

    3. Managing conflicts of interest.

    4. Funder's level of involvement in proceedings and dispute resolution.

    5. Termination of agreement by funder.

24. Each issue will be addressed below.

1. Confidentiality and privilege for documents disclosed to funder

25. A funder may request information or documents relating to the claim in order to perform due diligence and decide whether to fund the claim. You must comply with your duty of confidentiality to the client under rule 6 of the PCR 2015 when providing information about the claim to the funder.

26. Rule 6 of the PCR 2015 is reproduced for convenience:

"Confidentiality

6. […]

(2) Subject to paragraph (3) […] a legal practitioner must not knowingly disclose any information which —

(a) is confidential to his or her client; and

(b) is acquired by the legal practitioner (whether from the client or from any other person) in the course of the legal practitioner's engagement.

(3) A legal practitioner may disclose any information referred to in paragraph (2), if —

(a) the client referred to in paragraph (2) authorises the disclosure[.]".

27. There may be a risk that legal privilege in documents will be waived when otherwise privileged communications are given to the funder. You should carefully review the position at law, and in particular advise your client on whether common interest privilege applies.

28. In any case, you should advise your client to enter into a confidentiality/non-disclosure agreement at the start of negotiations with the prospective funder before disclosing any documents. The confidentiality agreement should contain terms to the effect that:

(a) Parties will maintain confidentiality of all documents shared under the confidentiality agreement. You can specify what actions will be taken if there is any unauthorised disclosure.

(b) Documents shared under the confidentiality agreement are subject to privilege and the nature of the privilege should be clarified. (For example, you can assert that parties have a common interest in sharing information in order to arrange for third-party funding, and a common interest in continuing to share information as the matter proceeds.)

(c) Documents shared with the prospective funder under the confidentiality agreement are shared with the client's consent, and are solely for the purpose of pursuing the desired dispute resolution proceedings.

(d) The sharing of such documents and communications with the prospective funder neither impugns their confidentiality nor waives privilege over them.

(e) The funder is obliged to return all documents shared under the confidentiality agreement if parties do not enter into a funding agreement, or where the funding agreement is terminated.

29. You should advise your client that the funding agreement should contain confidentiality clauses of a similar nature as set out in paragraph 28 of this Guidance Note.

2. Scope of funding provided and funder's liability for adverse costs orders

30. Regarding the scope of funding provided, you should advise your client on whether the funding agreement states, *inter alia*:

(a) the maximum amount the funder will provide;

(b) any provisions for varying the maximum amount as required; and

(c) the types of costs that the funder agrees to pay (for example, reasonable recovery costs or enforcement proceedings).

31. In particular, you should advise your client on the funder's liability under the funding agreement to:

    (a) meet any liability for adverse costs;

    (b) provide security for costs;

    (c) pay any premium to obtain costs insurance; and

    (d) meet any other financial liability.

32. Similarly, you should advise your client on his/her residual liability under the funding agreement to bear any costs that the funder has not agreed to bear. For example, you should advise your client that he/she must meet any liability for costs, including adverse costs, which the funder has not agreed to bear under the funding agreement.

33. The funding agreement will usually set out the priority of payments should the claimant succeed. For example, the funding agreement may provide for payment of proceeds in the following order:

    (a) The funder is reimbursed for its investment or expenses to date.

    (b) The funder is paid its return.

    (c) The balance is paid to the claimant.

34. Payment of proceeds to the funder should not take place until the proceeds are actually recovered. Therefore, any terms that define the proceeds must be clearly drafted, so there is no misunderstanding between the parties as to when the payments are to be made.

3. Managing conflicts of interest

35. Potential conflicts of interest may arise in third-party funding. The risk of conflict is real because:

    (a) In many cases, the claimant retains the lawyer but the funder pays the lawyer's fees; and

    (b) Funding agreements may provide that the funder can give input on decisions, even where the lawyer is retained by the claimant.

    (c) So for example, where the claimant wishes to settle but the funder does not, the lawyer may feel pressure to accede to the funder so as to gain repeat business.

36. It is good practice to advise your client that he/she can retain independent counsel to advise on the funding agreement. This holds true even though, in practice, the client may not have the financial resources to retain separate counsel for the underlying dispute and for the funding agreement.

37. You should advise your client that the following terms be included in the funding agreement:

    (a) The funder acknowledges that the lawyer owes his/her professional and fiduciary duties to the claimant.

(b) The funder further acknowledges that if there is a conflict of interest between the funder and claimant, the lawyer acts solely for the claimant and may continue to do so only in that capacity.

(c) The funder shall not induce the claimant's lawyer to breach his/her professional duties.

(d) The funder shall not seek to influence the lawyer to cede control or conduct of the dispute to the funder.

(e) It is the claimant's choice whether to disclose to the funder any written opinion that his/her lawyer has prepared on the merits of the case. The lawyer will share such opinion only if the claimant consents. In any case, funders should engage independent counsel to assess the claim.

38. Regardless of the structure of the funding agreement, you owe your ethical duties to the party that retains you. You should ensure that the terms of the funding agreement are consistent with your ethical duties and with the terms of your retainer.

39. You are discouraged from being jointly retained by both the claimant and funder. There is a high risk that you will not be able to competently advise one or both parties if their interests diverge in the course of proceedings (*NB,* should you decide to enter a retainer with both the claimant and funder, please refer to rule 20 of the PCR 2015 for your duties when advising multiple clients whose interests may conflict). We note that joint retainers may be unlikely to arise in practice as many funders have their own in-house counsel.

40. Rule 49B of the PCR 2015 (which is set out in full at paragraph 19 of this Guidance Note) prohibits holding certain financial interests in funders:

(a) You must not directly or indirectly hold any share or ownership interest in a funder which you have referred your client to, or which has a funding contract with a client of your practice (rule 49B(1) of the PCR 2015).

(b) You must not receive any commission, fee or share of proceeds from a funder you have referred your client to, or which has a funding contract with a client of your practice (rule 49B(2) of the PCR 2015).

(c) For clarity, rule 49B(2) of the PCR 2015 does not prohibit you from receiving fees, disbursements or expenses payable by your client for your provision of legal services (rule 49B(3) of the PCR 2015).

4. Funder's level of involvement in proceedings and dispute resolution

41. You should advise your client that the funding agreement should specify the nature and scope of the funder's role. The funder's involvement could potentially include, *inter alia*:

(a) assisting with choice of solicitor(s);

(b) assisting with choice of arbitrator(s) and/or mediator(s);

(c) assisting with strategic or tactical decisions;

(d) considering advice from and providing instructions to the claimant's solicitor(s);

(e) managing litigation expenses; and

(f) providing input on decisions about whether to settle the claim and on what terms.

42. You should advise your client that the funding agreement should contain a dispute resolution mechanism, in case parties disagree on what decision to make. For example, the funding agreement may state that:

(a) the parties will refer any differences to an independent arbitrator for an expedited and binding decision; or

(b) the claimant has the final say, but the funder reserves the right to claim against the claimant if it can show the claimant was acting in bad faith.

5. Termination of funding agreement

43. You should advise your client that the funding agreement should state when the funder may terminate the agreement and what obligations survive after or arise as a result of the termination. Generally, funders should not have a discretionary right to terminate the agreement.

44. You should advise your client that if the funder terminates the funding agreement, the funder should remain liable to pay:

(a) all costs, such as adverse costs, that have accrued up to the date of termination; and

(b) any costs that will accrue as a result of and subsequent to the termination.

45. You should also advise your client on his/her rights to terminate or withdraw from the funding agreement. In particular, you should explain any express contractual restrictions or adverse terms that affect your client's ability to terminate or withdraw from the funding agreement.

D. Duty to Disclose Third-Party Funding

46. Conflicts of interest may arise if an arbitrator who hears the dispute is related, whether directly or indirectly, to the third-party funder who funds a party to the dispute. For example, the arbitrator may have acted as counsel to a party whom the third-party funder previously funded, or be acting as counsel to a party the funder is currently funding in another claim. These examples demonstrate a real risk of conflict on the part of the arbitrator, and may give rise to justifiable doubts as to the arbitrator's impartiality and independence.

47. Hence the new rule 49A of the PCR 2015 imposes a new duty on lawyers to disclose the existence of any third-party funding. This is, amongst others, to enable arbitrators to check for conflicts. Rule 49A is set out in full below:

"Disclosure of third-party funding

49A.—(1) When conducting any dispute resolution proceedings before a court or tribunal, ***a legal practitioner must disclose to the court or tribunal, and to every other party*** to those proceedings —

(*a*) the ***existence*** of any third-party funding contract related to the costs of

those proceedings; and

(*b*) the ***identity and address*** of any Third-Party Funder involved in funding the costs of those proceedings.

(2) The disclosure under paragraph (1) must be made —

(*a*) ***at the date of commencement*** of the dispute resolution proceedings where the third-party funding contract is entered into before the date of commencement of those proceedings; or

(*b*) ***as soon as practicable*** after the third-party funding contract is entered into where the third-party funding contract is entered into on or after the date of commencement of the dispute resolution proceedings."

(emphasis added)

48. Therefore, when conducting any dispute resolution proceedings where your client is engaged in third-party funding, you must disclose:

(a) the existence of that funding contract; and

(b) the identity and address of the third-party funder.

49. You must disclose this information:

(a) at the date the dispute resolution proceedings commence, if your client entered the funding contract before the proceedings started; or

(b) as soon as practicable, if your client enters the funding contract on or after the date of commencement of proceedings.

50. You should consider informing your client at the start of your retainer that you have a professional duty to disclose whether your client is engaging third-party funding. It is good practice to check with your client at the start of the retainer on whether he/she intends to engage or is already engaged in third-party funding.

51. If your client is not engaged in third-party funding at the start of your retainer, you are strongly encouraged to check with your client again if you become aware of circumstances that strongly suggest that the client is engaged in third-party funding.

52. It is good practice to disclose any termination of the third-party funding contract or any change of the third-party funder.

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