



TERMS OF BUSINESS FOR LEGAL SERVICES

January 2018

Introduction

These terms of business (**Terms of Business**) are produced for the benefit of and apply to clients of Castle Chambers (**Firm**) in respect of all legal professional services and advice we are asked to provide and/or arrange (**Legal Services**). These Terms of Business and any related letter of engagement explain the basis upon which we accept instructions and charge for Legal Services.

The Terms of Business are deemed to be incorporated into any letter of engagement we send to you at the outset of our receipt of instructions from you. Please consider them carefully and, if you have any queries, raise them within fourteen days of receipt of these Terms of Business.

We provide Legal Services in respect of the laws of Jersey. In these terms, **we** and **us** refer to the Firm and **you** and refers to the client or clients.

Aim

Our aim is provide you with high quality, efficient and timely Legal Services. We will act in what we perceive to be your best interests, keeping your affairs confidential and, in the event that any conflicts of interest arise, point these out to you as soon as practical after we have become aware of any such conflict.

Personnel

Advocate Sarah Dale will have overall responsibility for your matter. However, work may be delegated to staff members who are appropriate and qualified to handle the work concerned. We will always try to ensure that someone is available to speak or respond to you straightaway or otherwise in a timely manner. If at any time you wish to discuss any matters arising from the services provided or fees charged, you should contact us without delay in order that we can address such matters.

Terms

We shall provide Legal Services on the following terms:

- a. you should, unless otherwise agreed, provide initial instructions in writing. It is vital that you provide us with all relevant information (including electronically held information) and documents and indicate any gaps and keep us informed of any material changes in your instructions, knowledge or circumstances or any matter having a bearing on the matter;
- b. we shall not do anything or be required to do anything which in our opinion may conflict with the laws and regulations of Jersey or the terms of any permits, consents, licences or applicable codes of practice made thereunder by any competent authority in Jersey nor shall we be required to do anything which may give rise to any risk of criminal or civil liability or prosecution in any part of the world;
- c. save as expressly agreed in advance in separate and specific instructions, we are not and do not hold ourselves out as being experts in or have knowledge of the laws or regulations of any jurisdiction other than Jersey;
- d. we shall keep confidential all information and documents concerning the business in respect of which we are requested to provide Legal Services and any transaction or matter involving you unless:
 - i. we are required to disclose information under the laws and regulations of Jersey or by order of the Jersey courts, or courts of any other competent jurisdiction, or the failure to make such disclosure would, in our opinion, be prejudicial to us, our staff or any agents;
 - ii. we are authorised to disclose any information by you; or
 - iii. where we are working with other advisers on your behalf, in which case, unless you expressly otherwise instruct us, we will disclose such information to them in furtherance of the provision of Legal Services as in our view is appropriate; or

- iv. the information concerned is already in the public domain; or
 - v. it is necessary to or desirable to disclose the same to defence any claim against us;
- accordingly, by instructing us in accordance with these Terms of Business, you waive your rights to privilege in respect of any disclosure of information as set out above;
- e. we shall not be required or under a duty to disclose to you any information we may have or be deemed to have about any matter affecting you which we may have acquired in the course of acting for or providing services to any other client in any way;
 - f. notwithstanding our duties and responsibilities in relation to the Legal Services you shall retain responsibility and accountability for
 - i. the management, conduct and operation of your business and your affairs;
 - ii. deciding on the use of, choosing to what extent you wish to rely on, or implementing advice or recommendations or other products of the Legal Services supplied by us;
 - iii. making any decision affecting the Legal Services, your interests and your affairs; and
 - iv. the delivery, achievement or realisation of any benefits directly or indirectly related to the Legal Services which require implementation by you;
 - g. we may rely on any instructions or requests made or notices given or information supplied, whether orally or in writing, by any person whom we know to be or reasonably believe to be authorised by you to communicate with us for such purposes. We may receive information from you or from other sources in the course of delivering the Legal Services;
 - h. any product of the Legal Services released to you in any form or medium shall be supplied by us on the basis that it is for your benefit and information only; and
 - i. in the event of a seriously disruptive event occurring at the offices of the Firm, we shall endeavour to restore our Legal Services as soon as practicable. We cannot accept responsibility for any delay caused by such disruption or for any other consequences beyond our reasonable control.

Professional Indemnity Insurance

The Firm has in place professional indemnity insurance. We may disclose any information to our professional indemnity insurers or advisers.

We will not be liable to you for any claim or claims in excess of an aggregate sum of £2 million (including and without limitation any damages, costs, interest associated with any claim) and any such excess liability is excluded. Should you require an enhanced level of cover, that will need to be agreed in advance by us in writing and payment received by us for such additional fees as we shall specify.

Joint Clients

If we are instructed by more than one person or more than one representative of a company which is our client, we are entitled to act on the instructions of any one of such persons and to correspond with any of such persons unless otherwise agreed.

In this situation there will be no rights of confidentiality between such persons or representatives so that all information and documents can be shared with any one of you. If there is a difference of opinion on your instructions you may need to be separately represented and if a conflict of interest arises between you or your representatives, we may have to cease acting for both or all such persons or companies.

Litigious or Contentious matters

Our primary duty is to the court and we have a fundamental duty not to mislead the court. In the unlikely event of a conflict arising we may have to decline to act for you further. We are also obliged under the rules of professional conduct of the Jersey Bar to decline to act for you further in the case of any instructions which we in our own discretion consider to be vexatious, vindictive or untrue.

In certain civil court proceedings it is the duty of the litigant not only to tell the truth but also to give full and frank disclosure including evidence of allegations or defences of the opponent usually where the opponent is not in court. There is a duty to supply at the relevant time lists of documents (discovery) and permit inspection of documents that are relevant to any fact or matter in issue and which are in your custody, power or control. (**Documents** mean hard copy, electronic, micro-fiches, audio tapes, video tapes etc., including internal e-mails capable of being recovered and even if deleted or purged and include all communications). It is, therefore,

essential not to dispose of or put beyond your custody, power and control any such documents that may need to be discovered and inspected and to provide us with all such documents in due time.

In the event that you win your case, the court may order the other party to the action to pay your taxed or assessed legal costs. These costs are typically 20-40% less than the true legal costs which you will incur and for which you will remain liable to us.

In the event that you lose your case, the court will usually award the legal costs against you and you will be liable for the other parties' legal and other costs in addition to your own.

Whatever the outcome, the court has a discretion to award legal costs as it thinks fit and the winning party is not always assured of a full or favourable costs order. You may incur third party and other costs that you cannot recover in any event.

When proceedings are commenced they can only be withdrawn by consent or with leave of the court and the court may impose terms such as payment as to the costs of the other party.

The court generally expects the parties to pursue litigation expeditiously and to meet certain standards and requirements over which we cannot exercise cost control. The court will generally expect the parties to try to settle differences by agreement or by mediation and failure or refusal to do so can affect the award of costs.

Professional undertakings

If you or your agent instruct us to give a professional undertaking we reserve the right to refuse to do so. Where we give any such professional undertaking we will usually require you to support this in writing and to confirm agreement to the terms. In any event we will be entitled to full security to meet the obligations incurred on your behalf and all costs associated with the undertaking on a full indemnity basis. An undertaking once given (and subject to its terms) will not necessarily be able to be withdrawn and may be for an unlimited time.

In relation to any such undertaking given on your behalf, you agree fully and immediately to indemnify us in respect of all claims, time costs, liabilities and disbursements incurred by us in complying with it.

Powers of Attorney

Where you provide us with a power of attorney we may act on that power of attorney in accordance with its terms consistent with your general instructions and without the need for your specific written instructions to act upon it. Nevertheless, we reserve the right to request specific written instructions and may at our discretion refuse to act without such written instructions.

Fees

In the absence of any agreement to the contrary, we will charge for the Legal Services on the basis of the time spent in carrying out the work. Time spent will include time spent to or from any meetings.

Time based fees will be charged at varying rates depending on the nature of the work and the qualification and/or experience of the individual undertaking such work. These rates may be changed from time to time. Full details of rates will be provided upon request and are exclusive of tax or disbursements. The precise rate will be based on a number of factors including:

- a. whether the work is of a routine, novel or complex nature;
- b. whether there is specialised legal knowledge required in connection with the advice;
- c. the importance, monetary or other value of the matter;
- d. the amount of information and/or the volume of documents which we may have to review in connection with the legal advice;
- e. the urgency of any action required;
- f. the place and time of day which any work required to be done was carried out; and
- g. the amount of time spent in carrying out the work.

Time spent on a matter will be recorded by all members of the Firm dealing with it. We will always be willing to discuss the basis for charging a particular matter at the outset. We can also indicate the level of current unbilled time at any point, upon request.

It may be possible to give an indication of costs but this is unlikely in litigation. Where an estimate of fees is requested and given, unless otherwise agreed, it is only an indication of the amount anticipated as being the likely charge and shall not be regarded as an agreed fee for the work on the transaction unless specifically confirmed, in writing, as such. In particular any estimate will be provided only on the basis of the information you have given us, that you have provided all key information and documents at the outset, there are no material changes in instruction or circumstances, there are no unforeseen complex legal or other issues and we did not need to liaise with non-identified parties. Estimates will also exclude disbursements and the costs of other third parties.

Where we are obliged to charge GST or any other similar tax in respect of any of the services which we provide, we will add the relevant tax to our charges and disbursements at the applicable rate from time to time in force.

Billing Policy

Our normal policy is to bill matters on an interim basis at least every month or at completion of a matter, if earlier. All disbursements made on your behalf (including company searches, court fees, travel expenses, document production, scanning and photocopying) will be charged on the next bill sent to you although we reserve the right to require payments in advance for significant disbursements which are likely to arise.

We also reserve the right to request payments on account of future fees and third party costs to be incurred in a matter. Such payments on account will almost always be required in matters of a litigious or contentious nature. Any delay in providing payment to us may have adverse effects upon a matter, since ordinarily work on that matter will not be carried out by us where payment is delayed. In some cases, such delay may result in an action or application that you have made at risk of being struck out by the court. If you fail to provide funds on account, having been requested to do so, we shall be entitled to withdraw from representing you.

Payment terms

All fees and disbursements will be due upon presentation of our invoice. If any invoice remains unpaid for more than 30 days, we reserve the right to charge interest (on all fees and disbursements) from the date of the invoice to the date of payment at the rate of 1% per month. We will hold you personally liable for our fees even where you are entitled to reimbursement from another source, for example, an insurer or another party if a court so orders.

If we hold monies in our clients' account (whether as a result of a request for monies to be held on account or future fees and disbursements or not) then we may settle any invoices for fees and disbursements out of any such monies held in the clients' account as soon as the invoice has been rendered.

Where any fees and disbursements remain unpaid for more than 60 days beyond their invoice date, we reserve the right to cease providing any Legal Services until all outstanding fees and interest thereon have been settled in full and an amount has been received on account of future fees and disbursements.

On ceasing to provide any such Legal Services as a result of requested funds to be held on account or fees and disbursements being overdue we will not answer any correspondence or attend to any filings or other matters which may need to be attended to on your behalf in relation to the Legal Services and we shall not incur any liability as a result of our ceasing to provide Legal Services in these circumstances. We reserve the right to charge for the time spent in collecting overdue fees, disbursements and third party charges.

Client funds

The Firm's policy is not to accept cash from clients.

If we receive money from you, other than in payment of an invoice, we will hold such money in a bank account separately from the firm's monies subject to our payment terms as set out above and to the provisions contained in The Law Society of Jersey Code of Conduct.

Communications

You will keep us informed as to your contact details to enable us to communicate with you and especially if the matter is urgent or sensitive. We will communicate with you by way of letter, email or telephone to the address or numbers provided unless you expressly tell us not to do so.

If an email address is provided, it must be an email address that is checked on a daily basis and we will not be liable for any losses incurred as a result of your failure to check or review any email we may send. We do not encrypt messages unless by prior agreement and cannot guarantee the security of any transmission or that any transmission will be virus or error free. We accept no responsibility or liability for the same, nor for any misdirection, interception, corruption, lost, blocked, destroyed, delayed, incomplete or otherwise affected transmission, whether it is a transmission between the Firm and you or the Firm any third party with whom we may communicate with in connection with the provision of the Legal Services.

We reserve the right to record telephone calls.

Storage of data, files and papers

After termination of the provision of the Legal Services, we are entitled to retain all papers and documents which have come into existence in the course of our providing the Legal Services until all fees and disbursements in connection with provision of the Legal Services and any third parties shall have been settled in full.

Subject to payment in full of all fees and disbursements, we will, on your instructions, provide originals of any documents belonging to you which we are holding or which we have under our control and which have come into existence while we provided Legal Services. We reserve the right to retain copies of such original documents which may be requested.

Where, as part of providing Legal Services, we have created internal memoranda, attendance notes and other documents for our own purposes then in accordance with accepted principles such documents shall belong to us and we shall not be obliged to hand over originals or copies of any such documents to you or to any other adviser appointed by you unless ordered to do so by a court of competent jurisdiction.

After termination of the provision of the Legal Services, we will retain a complete copy of your file for a period of 10 years from the date of closure of the file and we reserve the right to destroy hard copies and store the file electronically immediately after the matter is concluded.

Should we need to retrieve or produce files from storage (whether electronic or otherwise) in relation to continued or any new instructions to act for you in a matter where previous files may be relevant, we would not normally charge for the retrieval of files from storage. However, if you or any third party with your agreement makes a specific request for information concerning a matter in which we are no longer acting for you and you wish to receive specific documents or other papers we reserve the right to charge for fulfilling any such request.

Notwithstanding our agreement to retain document, whether during or after the provision of Legal Services, we will not be liable for any loss, destruction or damage to such documents howsoever caused.

Publicity

For the purposes of marketing, publicity or selling our services we may want to disclose that we have advised you, in which event we may identify you by your name and indicate the general nature of the relevant matter and any details, which have become publicly known. We will not do this if you specifically ask us not to do so.

Data Protection and Registration

We are registered as a holder of personal data in relation to our clients and contacts under the Data Protection (Jersey) Law 2005. You may at any time request access to any personal data which we hold in electronic form about you. You acknowledge and agree that we may discharge our obligation without providing copies of all or any personal data. We reserve the right to use any data for marketing and promotion of other services offered by us, unless requested in writing not to do so.

Client due diligence and anti-money laundering procedures

As a matter of law, we are required to operate client due diligence checks and procedure. We reserve the right to apply such checks and procedures (including in particular confirmation of identity and address/place of business and verification of capacity to give instructions in the case of limited companies and partnerships and source of funds) in respect of all matters in which we are instructed to provide Legal Services. Any failure to provide such information as we request in order to enable us to carry out such checks entitles us to terminate our client relationship and we accept no responsibility or liability arising directly or indirectly as a result of our need to do this. Any information and documentation provided to us in order to enable us to operate such checks and procedures may be subject to disclosure and production pursuant to orders having legal effect. In certain circumstances we are required to disclose information and documentation pursuant to anti-money laundering statutes or court procedures concerning our clients to third parties such as banks providing services to such clients. By instructing us in any matter and providing such information as we require, you will have consented to our onward disclosure of such information to third parties where appropriate.

Variation and publication of these Terms of Business

We reserve the right to vary these Terms of Business from time to time including during the course of the provision of Legal Services in any particular matter. Where we do vary these Terms of Business in course of our providing Legal Services to you, we shall use reasonable efforts to draw such variation to your attention.

Third Party Advisers

We reserve the right, wherever we consider it necessary or appropriate in providing the Legal Services to delegate our responsibility or functions to or seek advice from any third party or agent in other jurisdictions.

If, at your request, we select and instruct lawyers or agents in other jurisdictions to act on your behalf, we will take care in so doing but we will not be responsible for their selection nor for any act or omission by them and unless otherwise agreed or in relation to UK counsel, you will have entered into a contract directly with them and you will be responsible for the payment of their proper fees and expenses.

Termination of Instructions

Once instructed to provide Legal Services on a particular matter, we expect to continue to do so until completion of that matter and we will continue to act for you in that matter until its conclusion unless:

- a. you give us written notification of the termination of instructions to provide Legal Services, addressed to Advocate Sarah Dale;
- b. any fees and disbursements which have been billed are more than 60 days overdue for payment; or
- c. it is not appropriate or in your best interests for us to continue to represent you (for example where a conflict of interest has arisen or where you have not satisfied our client due diligence requirements).

If we cease to act for you in either of the circumstances set out in sub-paragraphs 2 or 3 we will inform you.

Regardless of who terminates the instructions you will be responsible for payment of all billed and unbilled fees and disbursements up to the date of termination of our instructions and any costs and disbursements reasonably incurred in connection with the transfer of the work to another person chosen by you. We reserve the right to retain all papers and documents which relate to all matters in which we have been instructed until fees and disbursements have been paid as set out under our payment terms.

Complaints

If you have any complaint about the service we have provided and you are unable to resolve this with the individual dealing with the work, you should write without delay to Advocate Sarah Dale setting out the nature of the complaint. We take the matter of complaints very seriously hence every effort will be made to deal with the complaint promptly. Please note that any complaint should be made within a reasonable period of the problem arising, and in any event within 6 months.

Serious complaints about the conduct of a Jersey lawyer may also be referred to the Bâtonnier who may agree to institute independent disciplinary proceedings.

Disputes in relation to fees may be referred to the Law Society of Jersey which may, in certain circumstances and if agreed by both parties, appoint an independent person or persons to review and adjudicate upon a bill which has been rendered.

Should any matter be incapable of being resolved in any of the ways set out above then the courts of Jersey shall have exclusive jurisdiction to hear such complaint or dispute applying Jersey law in all such matters.

Enforceability

If any term or provision in these Terms of Business shall be held to be unlawful, void or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of these Terms of Business but the validity and enforceability of the remainder of these Terms of Business shall not be affected.

Jurisdiction

The relationship between the Firm and the client and these terms of business are governed by Jersey law, and, in the event of any dispute arising, you submit yourself to the exclusive jurisdiction of the Royal Court of Jersey and you waive any rights to claim that such courts are not the appropriate forum.