

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