

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