

# THE LAW SOCIETY OF SINGAPORE

## PRACTICE DIRECTION 5.3.1<sup>1</sup>

*[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

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<sup>1</sup> 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.