



## Legal Profession (Amendment) Bill

On 20 March 2018, Parliament passed the Legal Profession (Amendment) Bill. The Bill can be found [here](#), and my Second Reading speech can be found [here](#).

The Bill:

- Strengthens the disciplinary framework for lawyers, by introducing new remedial measures;
- Introduces a framework to deal with unclaimed client money and brings unclaimed intervention money within the same framework;
- Introduces a registration category for non-practising foreign law experts to appear before the Singapore International Commercial Court ("SICC"), to make submissions on matters of foreign law; and
- Makes miscellaneous amendments to the Legal Profession Act ("LPA").

### Strengthening the Disciplinary Framework for Lawyers

Singapore is an international legal services hub, and home to top legal talent. To preserve this reputation and protect clients and the public,



it is crucial that members of the legal profession continue to hold themselves to the highest standards of professional conduct.

The vast majority of lawyers uphold very good standards of conduct. However, from time to time, some fall short of the high standards required and it is necessary to have a robust disciplinary framework to address such situations.

The Bill strengthens our disciplinary framework by expanding the range of measures available to the Law Society Council ("Council") to deal with errant lawyers.

Council will now be able to prescribe remedial measures during disciplinary proceedings, in addition to, or in lieu of, the options already available. The remedial measures will include training, counselling or other means of rehabilitation aimed at addressing the root causes of the misconduct and reducing recidivism.

Council may impose a combination of the following measures, as appropriate:

- Prescribe remedial measures; and/or
- Issue a warning or reprimand; and/or
- Order the lawyer to pay a penalty.

The rest of the existing disciplinary framework remains unchanged, including the power of the Court of 3 Judges to order that a lawyer be suspended or struck off the roll of advocates and solicitors in more egregious cases.

The refinements to the disciplinary framework will enable a more nuanced, calibrated and hence more effective approach to dealing with misconduct.



## A New Framework for Unclaimed Client Money and Unclaimed Intervention Money

### ***Unclaimed Client Money***

The LPA requires client money to be held and administered by a practising lawyer in a client account, until it is paid out in accordance with the client's instructions or returned to the client.

However, in some cases, clients may become uncontactable. The problem becomes acute when affected lawyers who wish to retire and dissolve their law practices cannot find another practising lawyer willing to take over the client account. Such lawyers have no option but to maintain their law practices and client accounts and continue incurring the expenses of doing so.

The Bill provides a practical solution to this problem by establishing a new Unclaimed Money Fund ("UM Fund"), which the Law Society will maintain and administer.

Lawyers and Singapore law practices will be able to transfer unclaimed client money into the UM Fund, subject to meeting certain requirements which will be stipulated in subsidiary legislation, e.g. reasonable steps to be taken to locate the owner of the funds, before the Law Society will accept a transfer.

What happens if the owner of the unclaimed money surfaces after the funds are transferred to the UM Fund?

- If that happens, the Law Society will be able to return the transferred money through a statutory mechanism. Such claimants can apply to the Law Society for the transferred money directly, or through their lawyers.
- There will be a six-year limitation period for actions or claims to recover transferred unclaimed client money, from the date that the Law Society approves the transfer. This provides clarity and certainty for lawyers and law practices, especially those who make the transfer in order to retire.
- For claims made after the expiry of the six-year limitation, the Law Society will have the power to make discretionary payments to the client, taking into account the reasons why the claimant did not come forward before the time bar.



The Law Society may invest or use the money in the UM Fund, as prescribed, to fund pro bono services provided by it or its wholly-owned subsidiaries. This will allow the money to be applied towards the public good, instead of idling unclaimed in a client account.

### **Unclaimed Intervention Money**

When the Law Society intervenes in a lawyer's practice, it may take over the administration of the lawyer's client accounts. The monies in such accounts ("intervention money") is transferred into a special account held by the Law Society for the Law Society to administer, including by returning the intervention money to the lawyer's clients.

Currently, if the intervention money is unclaimed after six years, it is transferred from the special account to the Law Society's Compensation Fund.

The Compensation Fund is a Fund from which discretionary compensation payments are made to clients who have suffered loss or damage as a result of their lawyers' misconduct or negligence.

To date, however, not many such payments have had to be made and the Compensation Fund has adequate funds for its purpose.

As such, the Bill makes provision for intervention money which is unclaimed for six years to be transferred to the UM Fund instead.



## **Enhancing SICC procedures re: foreign law**

The SICC was established in 2015 to hear international commercial disputes, including those governed by foreign law, with little or no connection to Singapore. It has been a trailblazer for dispute resolution in Asia, having heard 17 cases in its first three years, covering diverse subject matters such as shipbuilding, construction, banking and finance, and parties from multiple jurisdictions, including Australia, Hong Kong, India, Indonesia, Japan and the UAE.

The Bill allows non-practising foreign law experts, such as academics with specialised knowledge on matters of foreign law, to appear in SICC proceedings and relevant appeals in the Court of Appeal, to submit on matters of foreign law.

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This is in line with international commercial arbitration, where it is common for experts in foreign law to make submissions on those laws before arbitration tribunals. Extending this option to SICC users will enhance its attractiveness, and strengthen Singapore's position as a dispute resolution hub.



## Miscellaneous Amendments

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The Bill makes a number of miscellaneous amendments, including three key ones highlighted below.

### **Declaration**

The Law Society is empowered to prescribe that specified classes of solicitors who practise or intend to practise in a prescribed area of the law must make certain declarations when applying for or renewing a Practising Certificate.

This puts into effect a recommendation by the Study Committee on Professional Standards and Etiquette in Court, which was formed under the auspices of the Singapore Academy of Law's Professional Affairs Committee.

At the present time, the Law Society intends to prescribe that solicitors practising litigation will need to declare that they have completed a short online test on professional conduct rules before they apply for or renew their Practising Certificates.

The online test is intended to serve as a self-learning and self-assessment tool to remind solicitors of their professional obligations as counsel, of the decorum and etiquette required in court.

- It is not intended to be an onerous requirement, but rather to propagate good practices and reinforce any changes relevant to the practice area.
- For the majority of practitioners who have been diligently observing the professional conduct rules, it will serve as a refresher. For newly admitted or younger lawyers, or those who do not do litigation regularly, it will serve as a useful guide.



- Lawyers who do not pass the test will be allowed to retake it multiple times until they do so, in keeping with the spirit and intent of the test to serve as a learning tool.

Council may exempt a solicitor or class of solicitors from having to take the test, if it is satisfied that the solicitor or class of solicitors is equipped with the required knowledge and skills for practice in the prescribed area of law.

### ***Compensation Fund***

Council will have greater flexibility to use the interest, dividends and other accretions of capital for a wider range of worthwhile causes, besides purchasing and maintaining a library for its members.

### ***Group Law Practices***

Singapore law practices which are structured as law corporations and limited liability law partnerships will be able to form Group law practices ("GLPs"). This updates the GLP scheme, which was introduced prior to the introduction of law corporations and limited liability law partnerships, so that it is no longer restricted only to sole proprietorships and partnerships.



## **Implementation**

Further details on the amendments described above will be set out in the subsidiary legislation, and their effective dates will be announced in due course.

## **Conclusion**

The Bill ensures that the legal framework for our legal industry remains up-to-date and responsive to changes in the legal landscape, and continues to serve as a sound basis for the future growth of our sector. ■