

Appendix A

Terms and conditions October 2015

1. Terminology

- 1.1 In these terms and conditions and the associated engagement letter(s), references to 'you' and 'your' are to the client or clients named in the engagement letter(s). References to 'we', 'us' and 'our' are to Bates Wells & Braithwaite London LLP.
- 1.2 Your contract is with Bates Wells & Braithwaite London LLP (referred to in these terms and conditions as 'the LLP'), a limited liability partnership (registered in London no. OC325522).
- 1.3 Senior members of the LLP may sometimes be referred to as 'partners'. Any reference in these terms and conditions to a 'partner', in relation to the LLP, is a reference to a member of the LLP or to a consultant or employee of the LLP. They are not in partnership with each other and the LLP is not in partnership with any of them.

2. Our service

We undertake to give you a reliable, prompt and responsive service. If you have any problems, please let us know straight away (see section 3 below).

3. Complaints

- 3.1 If you are dissatisfied with either the service you have received as a client or with any aspect of your bill, please raise your concerns with the partner in charge of your matter. Our aim will always be to deal with your concerns as quickly as possible and without recourse to any formal complaints procedure, if that is possible.

If it is clear that you remain dissatisfied the partner will inform you of the existence of our formal complaints procedure by sending you a copy of this procedure.

Individual clients:

If you are an individual client rather than a representative of an organisational client, please use our formal complaints procedure described below.

Organisational clients:

If you are the representative of an organisational client and your dissatisfaction relates to the service provided by the partner in charge of your matter you should raise your concerns with the partner who manages the relationship with your organisation. If that is the same person or if you remain dissatisfied, please use our formal complaints procedure described below.

Stage 1

You should write to the Managing Partner and clearly mark your letter "formal complaint". Please outline the cause of your dissatisfaction and if possible the action you would like us to take in order to remedy that dissatisfaction.

Stage 2

We will acknowledge receipt of your complaint within five working days and inform you of the name of the person who is dealing with your complaint. We will normally ask an independent complaints investigator to consider your complaint and recommend the action that we should take in relation to the complaint. We will record your complaint in our central register which is reviewed regularly by the Management Board.

Stage 3

The person investigating the complaint will have full access to all the information and personnel that they require to investigate your complaint properly. They may contact you directly if they need further information from you to assist the investigation. They will prepare a report, including their recommendations, which is sent to the Managing Partner for review.

We will ask the person investigating the complaint to recommend the action which they believe would be recommended by the Legal Ombudsman if the complaint was referred to the Legal Ombudsman.

Stage 4

The Managing Partner will write to you and will include the recommendations from the person investigating the complaint and the action we propose to take to implement those recommendations. We will generally follow the recommendations made but if we think they are not appropriate we will explain our reasons to you. You should receive a response to your complaint from the Managing Partner within 21 days of receiving the letter acknowledging your complaint.

If we have to change any of the timescales above, we will contact you to explain why.

Stage 5

If you are still not satisfied, the next step is for you to contact the Legal Ombudsman by one of the following methods:

Telephone: 0300 555 0333

Telephone outside the UK: + 44 121 245 3050

Email: enquiries@legalombudsman.org.uk

In writing: PO Box 6806, Wolverhampton, WV1 9WJ

www.legalombudsman.org.uk

You must contact the Legal Ombudsman within six months of receiving a final written response from us about your complaint or within six years of the occurrence of the matter about which you are complaining (or if outside this period, within three years of the date when you should reasonably have been aware of it).

Alternative complaints bodies such as ProMediate (<http://www.promediate.co.uk/>) exist, which are competent to deal with complaints about legal services should both you and our firm wish to use such a scheme. BWB does not agree to use ProMediate as we prefer the Legal Ombudsman's clear adjudication process.

3.2 If you are dissatisfied with our bill, you have the right to apply to the High Court for an assessment of our charges by an Officer of the Court under ss. 70, 71 and 72 of the Solicitors Act 1974. We hope that before making such an application you would first use our complaints procedure explained above.

3.3 If you no longer want us to act for you - either in general or on a specific matter - you can write to a partner in the LLP to let us know. We will send you a final bill for the work we have done for you up to the date we receive your written instructions to cease work. You may have a right to object to the bill by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974; if all or part of the bill remains unpaid we may be entitled to charge interest.

4. **Limitation of liability**

4.1 No individual member, employee or consultant of the LLP contracts with you personally, or assumes legal responsibility to you personally, for work performed on behalf of the LLP.

All communications with you in the course of our work, whether oral or written and whether signed by a member, consultant or employee, shall always be treated as having been sent or made on behalf of the LLP.

By engaging us, you agree that any claim of any sort shall be brought only against the LLP and that no claims will be brought personally against any of our members, employees or consultants who are involved in your work.

4.2 Our maximum liability in contract for contentious matters and in both contract and negligence for non-contentious matters is £3,000,000 (three million pounds). This limit of liability applies to the total of all claims made against us by all of the clients named in the engagement letter. It does not apply separately to each individual client, or to each incident of loss or damage.

4.3 Paragraph 4.2 does not apply in respect of:

- death or personal injury;
- loss or damage arising from fraud or wilful default on our part; or

- any other situation in which the limitation of liability is prohibited by law.
- 4.4 We accept no responsibility other than to you. In particular, we accept no responsibility to your bankers, creditors, shareholders or investors, or to your other professional advisers.
- If we are asked and agree in writing to give an opinion that might be relied on by someone other than you, we will write separately to set out the terms on which we are giving the opinion.
- 4.5 Our responsibility is limited to advising on the matters specified in our engagement letter. We will have no responsibility to advise on changes in the law that take place after our advice is given.
- 4.6 We advise only on the law and legal procedures applicable in England and Wales. You will need to obtain advice on the law and legal procedures of other jurisdictions separately. We can normally arrange this.
- 4.7 If you ask us to suggest another adviser, or if we suggest that you consult another adviser, either legal or otherwise, we assume no liability for their performance or actions, whether constituting an act or omission of negligence, breach of contract or otherwise.
- These other advisers may include, but are not limited to: a member of the Parlex Group of European Lawyers, of which we are a member; any other foreign law firm; trade mark or patent agents; accountants; or other experts.
- If we instruct such advisers on your behalf, we will do so as your agent and you will be responsible for payment of their charges.
- 4.8 Our role is to provide legal advice; it is not part of our role to advise on commercial, financial or business issues.
- In particular, we do not advise on the commercial or financial viability or merits of transactions, nor on the business risks that may be associated with them.
- 4.9 Unless we specifically agree to it in writing, as part of the work we are doing for you, we will not advise on tax-related issues or pensions matters.
- 4.10 Our advice can only be given on the basis of the information you provide. It is essential that you provide us with the information we need to carry out our work, and that the information is up to date, accurate and complete. You should notify us as soon as possible of any changes to the information you have given us and of any new information that may be relevant to our work for you. We reserve the right to stop acting for you if you do not provide us with important information, or changes in information, relating to your work.

5. **Billing**

- 5.1 How we bill you will depend on the work we are doing for you. In most cases, we produce regular interim bills (usually monthly and, if not monthly, quarterly) and a final bill at the end. Unless otherwise stated, interim bills will be payment on account of our final bill and will not necessarily reflect our full charges to the date of the interim bill.

If you have a question about a bill, please contact the partner responsible for your matter as soon as possible.

- 5.2 In the case of sale transactions, our fees will be payable out of the proceeds of the sale, when it completes, subject to any earlier payments that are needed. We reserve the right to deduct our fees from the proceeds, even if you have not agreed to them. This is subject to any adjustment in our fees that we agree to subsequently.
- 5.3 If you are a corporate client in the European Union, you should provide us with a copy of your headed notepaper showing your registration number for VAT, TVA or equivalent, to ensure we are not obliged to charge these.
- 5.4 For security reasons, we prefer all bill payments and payments on account to us to be made by bank transfer.

6. **Unpaid bills**

- 6.1 Bills are payable 21 days from the date you receive them. After 21 days from the date of receipt, unpaid bills will carry interest at 4% above Coutts & Co.'s base rate. We reserve the right to charge such interest without notice.
- 6.2 We are allowed to hold any deeds or documents or other property belonging to you until you have paid any outstanding bills.
- 6.3 If you do not pay a bill, we reserve the right to stop working on any matters for you, and to ask for payment in full of all bills for work carried out for you to that date.
- 6.4 We may apply any funds in our client account, which are not held for a specific purpose, towards the settlement of outstanding bills.

7. **Charges**

- 7.1 We reserve the right, without notice, to increase our fees, from 1 April each year, by either 5% or in line with inflation (whichever is the greater) and, at any time, for individual solicitors, when they move into a new charging band because of increased experience.
- 7.2 Our charges are exclusive of VAT and any expenses (disbursements) that we incur on your behalf, such as counsel's fees, company searches, court fees, copying and travel etc.

We will tell you about any major expenses before we incur them. It is likely that we will ask you to pay us in advance (including VAT) for any major expenses (such as for counsel's fees), to enable us to make payment when we receive the invoice.

We will usually require you to pay us the anticipated costs of any significant hearings or trial in advance.

When an expert witness is required, you may need to retain him/her directly and to be responsible for his/her fees. If an expert witness receives instructions directly from us, it is our policy to ask you to pay for the expert's fees before we instruct them. In any event, it is

a condition of this firm's retainer (our agreement to act for you) that you pay us for any expenses we incur or will incur on your behalf, as soon as we request payment from you.

- 7.3 It is our normal practice to ask new clients to make a payment on account when we start work for you. The payment will be credited against your bill, but it is important that you understand your total charges and expenses may be greater than any advance payments on account.

We reserve the right to stop working for you if any request for payment on account is not met promptly or if any bill is not paid in accordance with these terms.

- 7.4 Where we act for more than one client in relation to a matter, each client will, unless otherwise agreed by us in writing, be jointly and severally liable for our charges. In other words, each person is legally responsible for the full amount of our fees, disbursements and VAT as well as sharing the responsibility with the group of clients.

- 7.5 We will normally charge separately for 'transaction bibles', which are bound copies of all documentation relating to your work.

- 7.6 We give estimates of our charges in good faith but, unless otherwise agreed, our charges may be higher or lower than our estimates.

- 7.7 Appendix 2 details our policy with regard to the payment of interest to clients where we hold money within our client bank account.

8. **Responsible individuals**

- 8.1 Where our client is a private company, it is our usual practice to require one or more of the directors or shareholders ('responsible individuals') to be potentially personally responsible for payment of our fees and expenses. Whilst we would normally expect payment by the company, we reserve the right to recover payment from responsible individuals.

- 8.2 If there is more than one responsible individual, liability is joint and several, which means that each of them is individually responsible for paying the full amount of our fees and expenses - although, if that were to occur, that individual would normally have the right to recover a share from the others.

- 8.3 The liability of 'responsible individuals' is a primary, rather than a secondary, liability. This means that we are entitled to claim against responsible individuals directly, without having made claim against the company. We would only do this if absolutely necessary.

9. **Contentious matters**

You should be aware that, if we are on the record as acting for you in any proceedings, the consent of the court might be required before we can be removed from the record. Your right to end the relationship with us may, to that extent, be restricted. If we have to apply to Court for permission to cease acting for you we shall be entitled to ask the Court to order you to pay our costs of making that application.

9.1 When litigation is contemplated, or is in progress, you must comply with the court rules. We can advise you what you need to do at any relevant time.

10. Your and other parties' costs and expenses in litigation

10.1 Insurance cover, such as Legal Expenses Insurance, or some other sort of funding may be available to you to meet your legal costs or those of your opponent, should you become liable for them.

You should check if you have any insurance cover or other funding for legal costs. If you do, we will do our best to obtain the largest contribution to your costs from your insurers (and will apply any money received from them in reduction of any sums owed by you to us. You should note that unless otherwise agreed in writing you are fully responsible for payment of our costs, even if you expect your insurer to contribute.

You may want to consider taking out insurance to meet your opponent's costs and expenses, in case you are unsuccessful in any litigation or other contentious proceedings you are, or may become, engaged in. We are happy to discuss this with you and the possibility of representing you on a damages based, "no win, no fee" or other similar agreement.

10.2 You should let us know at once if you may be eligible for legal aid. Regrettably, we are not able to carry out legal aid work, but we will be happy to recommend other firms who do legal aid work.

10.3 You are liable to pay our bills, in accordance with these terms and conditions, no matter what the result of your case is. If you recover from a third party any part of the costs payable by you to us, the amount recovered can be used to satisfy part of our costs.

10.4 You will also be responsible for paying the costs and expenses incurred in seeking to recover any of your costs, if the court orders your opponent to pay some or all of your costs. In any event you should be aware that it could be a long time before your opponent pays you.

In any claim or proceedings, your opponent may not be capable of paying what the court has ordered, but your obligation to pay our bills in full under section 10.3 remains.

Even if you succeed in litigation, your opponent may not be ordered to pay all your legal costs and expenses, or these may not be fully recoverable, for example because your opponent becomes insolvent, bankrupt or for some other reason. It is rare for the whole of the costs you incur to be recoverable. Again, your obligation to pay our bills in full under section 10.3 remains.

Recovering costs from an opponent may itself involve additional costs and/or fees payable to a specialist costs draftsman, for example for the preparation of detailed and itemised bills, and costs assessment fees payable to the court.

10.5 If your opponent has legal aid, you are unlikely to be able to recover any of your costs and expenses, even if you win.



Bates Wells Braithwaite

- 10.6 If you are successful and the court orders your opponent to pay some or all of your costs and expenses, you can usually claim interest on your costs from the date of the relevant court order. If you have already paid our costs and expenses, we will return to you any interest that is recovered. If not, we are entitled to keep the interest.
- 10.7 If you lose a case, it is likely that the court will order you to pay your opponent's legal costs and expenses. This will be a cost to you in addition to our costs and expenses.
- 10.8 Under the court rules (the Civil Procedure Rules), the court may order you to pay costs to your opponent following the hearing of any application to the court. We will let you know immediately if this happens. It may happen at any stage of the litigation process. The court will usually set a short period of time (usually 14 days) for you to pay these costs. In that event, you will need to pay the costs to us which we will send to your opponent in order to comply with the court order.
- 10.9 When we receive payment in respect of costs or damages (i.e. financial compensation) from your opponent or their solicitors on your behalf as a result of a court order or agreement, we will first use the money to pay any outstanding costs owed to us. You agree that any payments due to you should be made directly to our bank account or payable to us. We will send you any remaining balance.
- 10.10 The court has the power to award or to disallow costs against parties who behave unreasonably and/or contrary to the court rules. For example, obstructive or uncooperative behaviour will often now lead the court to penalise the party at fault in costs.

11. **Papers and documents in contentious matters**

As soon as litigation (i.e. Court proceedings) seems likely or has commenced, you must stop any routine or other destruction of documents that might be relevant to the case. If you are a party to litigation you will normally be required to disclose any documents on which you rely, as well as any documents which adversely affect your own case or which support or adversely affect another party's case. This means that hard copy documents should be preserved and the routine or other deletion of computer records, especially email, should cease. This includes documents that are or were in your physical possession or of which you have the right to possession, or the right to inspect or take copies (for example records held by your accountant).

Your duty to retain and disclose relevant "documents" will cover electronic documents on computers, mobile telephones and other electronic devices. If you are in any doubt as to whether a "document" should be retained, you should raise the matter immediately with the solicitor dealing with your case.

In Court proceedings a party's disclosure obligation (which means informing your opponent of the existence of relevant documents and allowing them to be inspected) can be an onerous one. Further information regarding your rights regarding the disclosure process and your obligations can be found in our Guide to Disclosure on our website at www.bwbllp.com/dispute-resolution-guides or advice can be provided on request.

11.1 In certain circumstances, where for instance a claim may be or is made against this firm, we may disclose documents which are privileged or information which is confidential in respect of your matter(s) to our advisers, including solicitors, insurers and auditors. If you object to this please let us know. Otherwise the terms of section 19.1 below will apply.

11.2 External firms or organisations may conduct audit checks on our practice. These external firms or organisations are required to maintain confidentiality in relation to your files.

12. **Retention of papers and documents generally**

12.1 The LLP will not necessarily keep a working file of papers as we are increasingly using electronic files.

12.2 If you do not make arrangements to collect any documents and/or if you fail to pay our bill and we retain documents and other information on your behalf, whether in paper/hard copy form or whether held in electronic/soft copy form, we reserve the right, upon giving you notice, to destroy or otherwise dispose of some or all of them as we see fit. We shall be entitled to recover the costs of doing so from you as a debt due and shall be entitled to keep any proceeds of sale or disposal. You agree that we will have no liability to you for any loss or damage you may suffer as a result of the disposal or destruction of such documents and/or data.

12.3 We reserve the right to destroy any historic working file of papers and other correspondence currently held in storage (but not original documents or deeds which remain in force) at any time after 12 years from the date of creation. If you object to this, please let us know. We will not destroy documents that you ask us to deposit in safe custody, but we reserve the right to charge for storage.

13. **Data protection**

13.1 We will process any of your personal data, in accordance with our obligations under applicable data protection laws and regulations, for the following reasons: to provide you with the services you have requested; to comply with applicable laws and regulations; for administrative purposes; and to provide you with information about us and our services, including legal updates.

If, at any time, you do not wish to receive further information about us and our services, please let us know.

14. **Intellectual property**

Unless otherwise agreed in writing, we own any intellectual property in anything we produce under our retainer with you. Unless we inform you to the contrary in writing, a perpetual non-exclusive licence to use our intellectual property for the purposes in respect of which you have instructed us is automatically granted to you. In the event of non-payment of our costs, we may immediately terminate any licence granted and require the immediate delivery up or destruction of intellectual property.

15. **Money laundering**

15.1 Under anti-money laundering legislation we are obliged to confirm the identity of individuals and companies and the beneficial owners of organisations and trusts before accepting new instructions, and to review this from time to time. To avoid the need to request detailed identity information from you, we may use approved external services which review publicly available information on companies and individuals. However, should those checks, for any reason, fail adequately to confirm identity and beneficial ownership, we may write to you to ask for identification evidence, generally in the form outlined in Appendix 1. If you do not provide satisfactory evidence or information within a reasonable time, we may have to stop acting for you. In that event, you will be charged for any work we have already done.

15.2 Solicitors are under a professional and legal obligation to keep clients' affairs confidential. This is subject to a statutory exception. Legislation on money laundering and financing terrorism has placed solicitors under a legal duty to report a person (including a client) to the National Crime Agency if, for example, we have reason to suspect that they are engaged in money laundering.

This duty is most likely to affect 'regulated' aspects of our business - broadly, real estate transactions, tax advice and the establishment or running of trusts and companies. We may well not be able to tell you that we have made such a report, nor may we tell you the reasons for it or do anything which could prejudice any money laundering or other investigation that is being or is about to be conducted. In these circumstances, we may have to delay or stop acting for you in the matter.

16. **Disclosures to HM Revenue & Customs**

16.1 Legislation may require us to disclose to HM Revenue & Customs details of transactions that may result in a tax advantage. If we consider that this is the case, we will tell you, and you agree to give us the information and assistance that is necessary for us to meet our obligations in this regard, within the time required by law.

We will aim to secure your consent to such disclosure, but we may be required to make disclosure whether you consent or not. We will not be responsible for any loss (including, without limitation, additional tax, interest or penalties) that may happen as a result of our having done so.

17. **Conflicts of interest and confidentiality**

17.1 As far as we know, we do not have a conflict of interest in relation to your current instructions.

Conflicts of interest can and do arise and, if this happens, we might have to stop acting for you. This might be, for example, because we have discovered information, while acting for another client, which we would normally have to tell you, but telling you would conflict with our duty to the other client, in which case we reserve the right to withhold this information and to stop acting for you. In certain circumstances, we may continue to act for the other client, but only if we are able to observe our duty of confidentiality to you.

17.2 We act for many clients at any one time; some of them may operate in the same industry or sector as you do. You agree that the fact that other current or future clients may have, or

may develop, commercial interests adverse to you will not of itself prevent us from acting for them.

We will, however, always carefully consider our professional obligations in relation to instructions from you or any other client. We have rigorous procedures in place to identify conflicts of interest and to preserve the confidentiality of information we receive.

17.3 We maintain databases of legal know-how, to which advice and documentation relating to your work may be added. These databases are securely maintained and will not affect our obligations of confidentiality to you.

18. **Termination**

We may terminate instructions at any stage if:

- we consider it inappropriate to continue acting;
- you do not accept our advice;
- you fail to pay bills or sums on account promptly;
- we cannot get clear instructions from you.

If we stop acting for you, you will be liable to pay our charges for work done to the date of termination and any charges that result from it.

19. **Agreement**

19.1 Your continuing instructions will amount to your acceptance of these terms and conditions.

19.2 The laws of England and Wales govern all contracts between us and our clients and any 'responsible individual'. It is a term of our retainer (agreement to act for you) that any claim made against us must be made in the courts of England, which will have exclusive jurisdiction in respect of any such claim, subject to our rights to commence proceedings in any other jurisdiction.

Appendix 1 – Money laundering

If we have been unable to confirm your individual or corporate identity, or the beneficial ownership of your company, through searches of public records, we will write to you to ask for the information below:

Corporate clients

In common with banks, building societies and others, we are required by law to obtain evidence of the identity of company clients and at least one active director – preferably the person who instructs us.

Please could you confirm that the enclosed copy documents and information in relation to the company, which has been taken from documents and information available from Companies House at today's date, are complete and up-to-date:

- (a) memorandum and articles of association;
- (b) the accounts of the company for the period ending 20XX;
- (c) details of the names and home addresses of the directors and the secretary, if any, of the company as shown in the latest filed annual return;
- (d) details of the names and addresses of shareholders holding and beneficially owning 10% or more of the issued share capital of the company as shown in the latest filed annual return.

Please let us have a certified copy of any updated documents under (a) or (b) above or details of any differences to the information referred to at (c) and (d).

To comply with money laundering regulations, could a director of the company also provide evidence of their own identity and address, by producing the original of their passport and of a recent (last 3 months) gas, electricity, water or council tax bill or a bank statement addressed to them at their home address. If not able to produce these items personally, please let us have copies certified as correct by a solicitor, bank manager or chartered or certified accountant.

Individual clients

In common with banks, building societies and others, we are legally required to obtain evidence of an individual client's identity and address. This is because criminals wishing to launder money can use solicitors who deal with money and property on behalf of clients.

Please could you provide evidence of your identity, by producing the original of your passport and of a recent gas, electricity, water or council tax bill or a bank statement addressed to you at your home address. If you cannot produce these items personally, please let us have copies certified as correct by a solicitor, bank manager or chartered accountant.

Appendix 2 – Payment of interest in relation to monies held on behalf of clients

1. When we receive money from or on behalf of a client ("Client Money"), it will be paid into a general client account with our bank.

2. We will account for interest on Client Money to such extent as it is fair and reasonable to do so in all the circumstances in order to achieve a fair outcome for both the client and ourselves. We seek to comply with Rules 22 & 23 of the SRA Accounts Rules 2011.
3. We do not pay the full rate of interest that we earn on general client funds as this is at an enhanced rate that we can secure from holding large levels of client funds in aggregate. Under Rule 13.8 of the SRA Accounts Rules 2011 money held in a client account must be immediately available, even at the sacrifice of interest, unless the client otherwise instructs, or the circumstances clearly indicate otherwise. Accordingly we pay the same rate of interest as set by Coutts & Co in relation to its Client Account; we believe this enables clients to receive a fair market rate of interest whilst providing us with a return for administering and managing client funds, which have to be audited annually at our expense.
4. The interest payable will be calculated from the date of receipt of cleared funds to the likely date of receipt of interest by the client. We will allow 5 working days for cheque clearance. BACS payments received by us will be treated as cleared funds on the date of receipt. The interest will be calculated on the balance of Client Money held from time to time during the period in question. It will not be compounded.
5. In the event that the total calculated interest due to the client on a specific matter is £20.00 or less, then no interest will be payable to the client, as it is considered that such a sum may reasonably be retained by us to cover the administrative cost of managing those funds. If Client Money is held in relation to separate matters for the same client, other person or trust, we will normally treat the money as relating to the different matters separately unless otherwise specifically agreed in writing.
6. We will generally calculate and pay interest at the conclusion of a matter the interest will be paid gross of tax and the client has the responsibility of declaring the interest received to HMRC for taxation purposes.
7. Clients may undertake alternative arrangements to hold their funds privately during the course of any matter or they may request that the funds are held by us in a separate designated client deposit account. In the event of any client undertaking such special arrangements, we reserve the right to make a charge at the fee earner rates applicable to the matter for any reasonable additional time or third party costs incurred in satisfying the client's request in relation to their funds.
8. We will review and reserve the right to amend this policy on a quarterly basis and also whenever there is a change to the Bank of England Base Rate.