

# Hatch Brenner LLP

## General Terms and Conditions

The terms in this document as supplemented and/or amended by the attached Key Information and/or any relevant letter of engagement (“Terms”) apply to each matter in relation to which Hatch Brenner LLP undertakes work for you. The expressions “we”, “us”, “our” and “firm” and Hatch Brenner LLP mean or refer to Hatch Brenner LLP. The term “partner” means a member of Hatch Brenner LLP. The expressions “you” and “your” refer to our client. The expression “matter” means a specific transaction, dispute or issue in relation to which you ask us to provide services. Hatch Brenner is the trading name of Hatch Brenner LLP.

Hatch Brenner LLP is a limited liability partnership registered in England and Wales with registered number OC343110 whose registered office is 4 Theatre Street, Norwich, NR2 1QY. The firm is authorised and regulated by the Solicitors Regulation Authority (SRA Number 00499569) and therefore clients are entitled to claim against the Solicitors Compensation Fund.

### 1 Our Relationship with You

We seek to ensure that each matter on which we are instructed is dealt with by members of the appropriate department with the right level and area of expertise. This helps to ensure a cost-effective service. In practice this means that different people may be involved in the day-to-day conduct of a matter. To enable this to work well we believe that one person, usually a partner, should have overall responsibility for managing our relationship with you. The details of the person we propose should manage our relationship with you and who else will be involved in your matter are set out in the Key Information.

### 2 Setting Ourselves Standards

We operate a system throughout the firm of insisting our staff meet certain standards with regard to client care. These include:-

- (a) using reasonable efforts to keep you informed about the progress of your matter;
- (b) where appropriate giving you information promptly about any unexpected delays or changes in the services we are providing to you;
- (c) returning your telephone calls the same day if at all possible;
- (d) responding speedily to correspondence and where possible using plain English;
- (e) providing you with an explanation of the legal work required, a cost estimate (when possible) and the likely timescales involved.

Please tell us if you feel we are not maintaining these standards. In return, we ask you to respond to our requests promptly and to pay our fees and expenses without delay.

### 3 Communications

You will find our full contact details in the attached Key Information or any letter of engagement. Please tell us if you have a preferred method of communication (e.g. telephone, email or letter) and of any confidentiality issues when contacting you. Unless we hear from you, we will use whatever mode of communication appears to be appropriate in the circumstances.

Our office opening hours are Monday to Friday 9:00am to 5:15pm. There are variable opening hours during the Christmas and New Year periods and notification of these dates will be made available to you leading up to the relevant periods. In the event of you requiring an out-of-hours/emergency service, contact numbers and details will be provided to you for those purposes.

Any email message sent to us goes directly into the inbox of the person it has been addressed to. Please be aware of the following:

- The firm is connected to a computer network and the exchange of email messages may be subject to delays outside our control.
- It is not possible to monitor the safe receipt of emails and that messages have been read.
- Whilst we use reasonable endeavours to protect the confidentiality of email, this cannot be guaranteed.
- For the purposes of exchanging documents via the internet, our word-processing system is Microsoft Word.
- Password protection of documents will not be used, but will be considered if you ask us.
- We will not be responsible for any loss or damage arising from unauthorised interception, re-direction, copying or reading of emails including any attachments. We will not be responsible for the effect on any hardware or software (or any damage arising from any such effect) of any emails or attachments which may be transmitted by us (except where this is caused by our negligence or wilful default).

### 4 Your Instructions

Where instructions are given to us on behalf of a company, partnership or other organisation we shall be entitled to assume that the Terms have been approved by the appropriate officers of that organisation. We will assume that any person giving us instructions has actual authority to instruct us and we will be entitled to rely on any information provided by that person to us.

To enable us to provide services to you it is vital that you provide us with all relevant information as quickly as practicable. The information provided must be, as far as you know, accurate, complete, up to date and not misleading. You must tell us of any subsequent changes to the information provided (e.g. your contact details) and of any other information which may be relevant.

Unless agreed otherwise in writing by a partner, our services will not include advice concerning tax or the tax implications of any course of action.

### 5 Confidentiality and Conflicts

We will obtain, store, transfer and process your personal data in accordance with the Privacy Notice attached below. We will respect the confidential nature of any information which we receive from you, subject only to our duty to disclose information to comply with our legislative and regulatory obligations. However, if, as the matter proceeds, other professional advisers become involved we shall assume, unless you have notified us otherwise, that we may disclose any such information to and discuss it with them as necessary.

We may be required to produce all or part of your file to assessors or similar, as part of an audit or quality check, and may be required to disclose confidential information to our advisers or pursuant to our professional indemnity insurance.

We have procedures designed to prevent our acting for one client in a matter where there is, or could be, a conflict with the interests of another client for whom we are acting. If a conflict does arise then it will be up to us to decide whether we can continue to act for both parties, for one, or for neither.

If our client consists of more than one person, organisation or other entity then the liability of those persons, organisations or other entities will be joint and several and they will be treated as a joint client. Each such person, organisation or entity by instructing us permits us to disclose to the other joint clients any information which we would otherwise be prohibited from disclosing under our duty of confidentiality. If any joint client does not want us to make those disclosures and ends that permission or if any conflict of interest arises between joint clients then we may suspend our work or cease acting for any or all of the joint clients.

If you are buying a property or taking a mortgage, we expect to receive instructions from your lender to act on their behalf. If so, we will have to pass them information you give us that might be relevant to their decision whether to finance the purchase. If you tell us things that you do not want the lender to know and they are relevant to the lender, we may have to stop acting for the lender and possibly also for you.

If at any time you become aware of an actual or potential conflict of interest, please raise it with us immediately. Where our professional rules allow, you agree that we may act or continue to act for another client in circumstances where we hold information which is confidential to you and material to the engagement with that client. We will not, however, disclose your confidential information to that other client.

We may use personal information we receive from you for administration and compliance purposes and for marketing other services of the firm in which you may be interested. Please let us know if you do not wish to receive such information.

## **6 Duty of Care and Other Professional Advisers**

The services provided by us are for your benefit alone and solely for the purposes of the matter to which they relate. They may not be used or relied upon for any other purpose or by third parties. Our duty of care is to you as our client and does not extend to any third party. No third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the Terms.

We will, on your behalf, instruct, liaise with or coordinate advice from other professional advisers, including foreign lawyers. We will not be responsible for the accuracy or appropriateness of the advice given or work undertaken by those other advisers or for payment of their fees and expenses. We do not provide services relating to the laws of any jurisdiction outside England and Wales and cannot be responsible for the accuracy or appropriateness of the advice given or the work undertaken by foreign lawyers.

## **7 Exclusions and Limitations of Liability**

Your agreement is with Hatch Brenner LLP and it is Hatch Brenner LLP that will provide the services to you. You agree that you will not bring any claim whether in contract, tort, negligence or otherwise against any member, consultant, employee or agent of Hatch Brenner LLP. No member, consultant, employee or agent of Hatch Brenner LLP accepts or assumes any personal liability for the provision of services and shall be entitled to rely on the Terms to the extent they limit or exclude liability.

We comply with the Provision of Services Regulations 2009 by displaying the required details of our professional indemnity insurance in each of our offices. The insurance is worldwide in scope.

The total liability of Hatch Brenner LLP in connection with or arising, directly or indirectly, from any matter in relation to which you have asked us to provide services will be limited to the sum specified in the Key Information or any letter of engagement or, if no sum is specified, to an aggregate amount not exceeding £3 million. This limit will cover all claims of any sort whatsoever whether arising in contract, tort, negligence or otherwise and all losses, damages, costs and expenses (including interest).

We shall not be liable for any failure to provide services on any issue which falls outside the scope of our engagement and we will have no responsibility to notify you of any change (or any consequence of such change) in the law or any event which occurs after we have provided our services to you.

We shall not be liable for any indirect loss or damage or any loss of profit, income or production arising in any circumstances whatsoever, whether in contract, tort, negligence or otherwise and howsoever caused.

Nothing in these Terms shall exclude or restrict our liability to you for your death or personal injury resulting from our negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be so limited or excluded under any applicable law or regulation.

Subject always to the limit on our liability set out in these terms, our liability to you shall be limited to such sum as it would be just and equitable for us to pay having regard to the extent of our responsibility for the loss or damage and the responsibilities of all other persons. You agree that our liability shall not be increased by:-

- any limitation, exclusion or restriction of liability you have agreed with any other person, or any joint insurance or coinsurance provision between you and any other person;
- your inability to recover from any other person, or your decision not to recover from any other person.

## **8 Papers and Documents**

After completing the work we are entitled to keep all of your papers and documents while there is money owing to us for our charges and expenses. In addition, we will keep your file of papers for you in storage for not less than 1 year. After that, storage is on the clear understanding that we have the right to destroy it after such period as we consider reasonable or to make a charge for storage if we ask you to collect your papers and you fail to do so. We will not, of course, destroy any documents such as wills, deeds or documents which you ask us to hold in secure storage. No charge will be made to you for such storage unless prior notice in writing is given to you of a charge to be made from a future date which may be specified in that notice.

If we retrieve papers or documents from storage in relation to continuing or new instructions to act in connection with your affairs, we will not normally charge for such retrieval. However, we may make a charge based on time spent reading correspondence or other work necessary to comply with your instructions or for copying your file and any documents on it where we consider it necessary to retain copies for our own records.

## 9 Fees and Expenses

Our fees are calculated mainly by reference to the amount of time we spend on the matter. Other factors may also be taken into account, for example, complexity, value, importance to the client and urgency. We reserve the right to agree an uplift to our hourly rates to take into account these other factors. Although hourly rates are the normal way to calculate our fees, we may agree with you an alternative charging method. Please note that our charging rates are reviewed annually and you will be notified in writing of any change in these rates.

Time spent on the matter will include meetings with you and perhaps others; considering, preparing and working on papers; correspondence (including emails); legal research; preparing attendance notes; any time spent travelling; attending court; and making and receiving telephone calls. We record time in six minute units. More detail on our hourly rates will be set out in the Key Information or your letter of engagement and VAT will be added where applicable.

There are expenses incurred during a matter, other than our own, that are paid by us on your behalf (these are sometimes called disbursements). These expenses may include the fees of counsel and other experts, court fees, search fees and stamp duty. These items are charged at cost and payment on account of these expenses will usually be required. By instructing us you are authorising us to incur such expenses as we consider necessary. However, we will consult you before incurring any significant expenses.

We reserve the right to charge for telegraphic transfers, travelling expenses, photocopying, incoming and outgoing faxes and anti-money laundering search fees. VAT will be added where applicable and these amounts are shown in the bill as profit costs.

## 10 Client Money

Where we receive money from you which is to be applied on your behalf, it will be held in a separate client bank account which will be subject to the provisions of the Solicitors' Accounts Rules. Deposit interest paid to UK residents by us will be paid without deduction of tax. It is your responsibility to declare sums so received for tax purposes. As required by the Solicitors' Accounts Rules, money held by us will be taken in payment or part payment of our invoices within 14 days of the date of the invoice, unless that money is held for any other purpose.

Where we make payment of money to you or to another person on your behalf, it will usually be by cheque sent in the ordinary post or an electronic funds transfer (eg via CHAPS). We reserve the right to make a charge for our services in the case of any payments other than by cheque. Whichever payment method is used, we do not accept any responsibility or liability for any losses arising in respect of any interception, appropriation, misuse or delay in receipt. Subject always to the Solicitors Accounts Rules, we are not responsible for any loss arising from the insolvency of any bank where client funds are held.

## 11 Hatch Brenner's interest on client monies policy

In accordance with the Solicitors Accounts Rules 2011 it is the firm's policy to account to its clients on a fair and reasonable basis for both the client and the firm.

- 1) Client monies will normally be held in a general client bank account.
- 2) Subject to the provisions of this policy, the firm will account to its clients in respect of interest earned on money held in the general client bank account.
- 3) In determining the period over which interest is to be calculated, the firm will look at the following: the period between the date when the relevant funds received by the firm clear the client account and, if the firm sends the funds electronically, the date when the funds are sent or, if the firm sends the funds by cheque, six days after a cheque is raised.
- 4) The Interest rate applied is based on a calculation of 2.5% below the base rate as set by the Bank of England (subject to a net minimum rate of 0%).
- 5) Interest received by the firm on the aggregate of all client money held in the general client account, and subject to any interest paid to clients, is for the benefit of the firm.
- 6) The firm will not account for any interest in the following situations:
  - a) If the amount calculated is £20 or less;
  - b) On money held for the payment of a professional disbursement if the person to whom the money is owed has requested a delay in settlement;
  - c) On money held for the Legal Aid Agency;
  - d) On an advance from the firm into the general client account to fund a payment on the client's behalf in excess of funds already held for the client in that account;
  - e) If there is an agreement to contract out of the provisions of this policy;
  - f) Where the money held is less than the amounts detailed below for a time not exceeding the period indicated in the right hand

column;

<u>Amount</u>	<u>Time</u>
£1,000	8 weeks
£2,000	4 weeks
£10,000	2 weeks
£20,000	1 week

- 7) If the firm holds sums of money intermittently on the client's behalf in the firm's general client account during the course of acting, and the sum in lieu of interest calculated for any single period is £20 or less, the firm will only account to the client if the total interest exceeds £20.
- 8) Interest paid in respect on general client money is normally calculated and applied at the conclusion of the matter, but in some cases it may be more appropriate to account to the client at intervals throughout the matter if so, the calculation and application will be made on agreed dates.
- 9) Sums paid in respect of interest will be paid before the deduction of tax. It will be the recipient's responsibility to declare interest received to HMRC
- 10) If agreed between the client and the firm that client monies should be held in a separate designated client account, the firm will account to the client for all the interest earned on that account.
- 11) Trust money will be held in either the general client account or in a designated deposit account and is subject to the same interest policy on those accounts as set out in this document.
- 12) All client money, whether general client funds or designated deposit funds, will be held on instant access terms unless otherwise instructed, as instant access accounts help to facilitate transactions. As a result, the client may not receive as much interest as might have been obtained had they invested the money themselves.
- 13) The firm will not be liable to the client or any third party for any loss or damage suffered as a result of any act, omission, fraud, delay, negligence, insolvency or default of any bank, financial institution, clearing or payments system nor that of the directors, officers, employees, agents or representatives of any of the foregoing.
- 14) If the bank in which the firm holds funds should fail the firm reserves the right to disclose to the FSCS the names and other details of clients whose money is held there in order for those clients to claim compensation up to the applicable limit, currently £75,000.
- 15) Unpresented cheques- If a client fails to present a cheque at their bank for payment, interest will generally not be paid on this money.
- 16) Joint accounts - If Hatch Brenner LLP holds money jointly with a client, interest earned on the account will be for the benefit of the client unless otherwise agreed. If money is held jointly with another practice, the allocation of interest earned will depend on the agreement reached between the parties.
- 17) This policy does not apply when the firm acts as liquidator, trustee in bankruptcy, Court of Protection deputy or the trustee of occupational pension scheme. The firm will comply with the appropriate statutory rules and any other relevant provisions of the SRA Accounts Rules 2011 regarding payment of interest.
- 18) The firm will notify clients of the firm's interest on client monies policy as part of the firm's terms and conditions.
- 19) This policy will be reviewed from time to time.

## 12 Billing and Payment Terms

Unless otherwise agreed in the Key Information or your letter of engagement, we are entitled to bill monthly or on another interim basis and on completion of each matter. We may ask for an initial deposit on account of general costs and expenses. The deposit will be used to settle our bills when they are rendered after the work has been done. As and when that sum becomes exhausted we may apply to you for further sums on account. We will if requested try to give an indication of anticipated future expenditure. This is, however, sometimes difficult and any figures given can only be estimates. We require you to make a payment within 28 days of a request for further monies, failing which we reserve the right to cease doing any further work on your matter. Bills may be paid in person by debit or credit card. Payments by credit card only (not by debit card) will, however, be subject to a bank processing charge that you will be made aware of at the time of payment.

Our bills are due for payment on receipt without any deduction, set-off or counterclaim. We reserve the right to suspend or terminate provision of further services until payment is received. If you do not pay our bill when it is due, we reserve the right to charge interest on it at 4% above National Westminster Bank plc base rate ('the Overdue Rate') (from time to time on a daily basis from the date on which payment of our bill is due) and not to carry out any further work on the matter until our bill and any interest has been paid. We will also be entitled to retain property belonging to you, together with our own papers relating to the matter, until all sums outstanding to us are paid.

If you are not satisfied with the amount of our fee, you have the right to object to our bill and may take the following courses of action:

- 1) In the first instance we would encourage you to raise the issue of the fee being charged with the person dealing with your matter or alternatively with our Managing Partner Dawn Parkes.
- 2) As an alternative, you may be entitled to have your charges reviewed by the court (this is called 'taxation' or 'assessment') as set out in sections 70, 71 and 72 of the Solicitors Act 1974.
- 3) You are also entitled to lodge a complaint with the Legal Ombudsman (please see the guidance under section 13 headed Complaints).

Please however note that the following restrictions apply:

- 1) We are entitled to charge interest at the Overdue Rate on the outstanding amount of the bill in accordance with article 5 of the Solicitors (Non-Contentious Business) Remuneration Order 2009.
- 2) We are entitled to recover disbursements in any event. These will be indicated separately on your bill. Disbursements represent payments that we have made on your behalf to a third party and are treated separately from our own costs.
- 3) If you wish to raise an objection, you must do so within one calendar month of our bill being presented (or receiving notification that the firm has deducted its costs from money held on account).
- 4) The Legal Ombudsman may not consider a complaint about a bill if you have applied to the court for assessment of the bill.

### 13 Termination of Instructions

You may terminate your instructions to us in writing at any time. We may also bring instructions to an end where we have reasonable grounds for doing so (for instance if you do not pay an interim bill or comply with our request for payment on account, or if we are no longer able to act in your best interests). If we decide to stop acting for you, we will tell you the reason and give you reasonable notice in writing. We will also explain the possible options available to you for pursuing the matter.

We are entitled to keep all your papers and documents while money is owing to us for our charges and expenses. If at any stage you do not wish us to continue doing work and/or incurring charges and expenses on your behalf, you must tell us clearly in writing. If instructions are terminated you will be liable for fees arising and payments made or committed up to the date of termination of the instructions, together with any fees or payments for services necessary in connection with the transfer of the matter to another adviser (in which case we will charge for services provided in accordance with the hourly rate prevailing at the relevant time). VAT will be charged as applicable.

### 14 Complaints

If you have concerns or queries about the services that you obtain from our firm (including in relation to a bill), please in the first instance contact the partner responsible for your matter as detailed in your Key Information or letter of engagement. We will try to resolve any problems quickly and operate an internal complaints handling procedure (which is available on request from any partner) to help us to resolve the problem between ourselves. In the event that you are unable to resolve the matter with the partner please do not hesitate to contact our Managing Partner Dawn Parkes. If for any reason we are unable to resolve the problem between us, then you can ask the Legal Ombudsman to consider the complaint. Normally you will need to bring a complaint to the Legal Ombudsman within 6 months of receiving a final written response from us about your complaint. The Legal Ombudsman's contact details are:

Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)  
Telephone: 0300 555 0333  
Address: Legal Ombudsman  
PO Box 6806  
Wolverhampton  
WV1 9WJ  
Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

### 15 Governing Law

These Terms are governed by and will be construed in accordance with the law of England and Wales. You and we irrevocably agree to submit to the jurisdiction of the courts of England and Wales over any claim or issue arising under or in connection with the Terms and you and we waive any objection to proceedings being brought in those courts on the grounds of venue or on the grounds that such proceedings have been brought in an inappropriate forum.

### 16 Investment Advice

We are not authorised by the Financial Services Authority under the Financial Services and Markets Act 2000. Therefore, we may refer you to someone who is authorised to provide any necessary advice. However, we are able, in certain circumstances, to offer a limited range of investment services to clients because we are regulated by the Solicitors Regulation Authority. We can provide these investment services if they are closely linked with the professional services we have been engaged to provide.

We are included on the register maintained by the Financial Service Authority so that we can carry on insurance mediation activity (which is broadly the advising on, selling and administration of insurance contracts) where that work is incidental to the matter on which we are instructed. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Services Authority website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register).

### 17 Severability

If any Term is found by any court of competent jurisdiction to be illegal, invalid or otherwise unenforceable then that provision shall, to the extent necessary, be severed and shall be ineffective but without affecting any other Term.

### 18 Clients with Disabilities

Arrangements can be made for our terms and conditions to be made available on request on audio tape, large text or braille.

### 19 Introductions and Referrals

Where we have a relationship with a third party (for example a funder, fee-sharer or introducer) which relates to any instruction from you, we will disclose that relationship to you and provide details of any payments made.

#### Referrals under the Solicitors' Code of Conduct 2007

The firm is on the panel of approved/recommended Solicitors of the following firms/bodies:-

Payment of these referral fees will not, however, affect our normal charges to clients and we will charge in all cases the same fees as those charged to other clients for the same or similar services.

## HATCH BRENNER LLP Privacy Notice

### What is the purpose of this Notice?

We are committed to protecting the privacy and security of your personal information. This Privacy Notice describes how we as a 'Data Controller' collect and use personal information about you during and after our acting for you, in accordance with the Data Protection Act 1998, the UK Data Protection Bill, and the General Data Protection Regulation (GDPR). This notice may be updated, and the latest edition can be found on our website or by asking us for a copy.

If you have any questions relating to your privacy which are not answered in this notice, then please discuss them with us or email [info@hatchbrenner.co.uk](mailto:info@hatchbrenner.co.uk) and we will respond within 48 hours.

### What do we collect?

In the course of acting for you we may receive, store, and process your personal information, which may include (but is not limited to) the following types of information: your personal contact details such as name, title, addresses, telephone numbers, and personal email addresses, date of birth, gender, marital status and dependants, next of kin and emergency contact information, financial data such as bank account information, tax status, salary and other employment-related records and information, copies of ID documents such as your driving licence, passport, utilities bills, photographs, etc. We will also collect personal data in order to comply with our statutory client identification and anti-money laundering obligations. We use the credit reference agency TransUnion (formerly CallCredit), who are fully GDPR compliant, and whose Privacy Notice can be viewed at <https://www.callcredit.co.uk/legal-information/bureau-privacy-notice>.

### Why do we process your personal data?

We will only ever process your personal data for one or more of the six legal reasons permitted by the GDPR. In virtually all cases this will include that such processing is necessary for the performance of our contract with you, i.e. for the provision of our legal services. In some circumstances if you fail or refuse to provide relevant personal data we may not be able to proceed with contracting with you to provide our legal services. We would discuss such specific issues with you as appropriate. Other lawful grounds for processing may include: that the processing is in our legitimate business interests (i.e. the provision of legal and related services) having balanced your expectations and interests, to comply with our legal/regulatory obligations, and/or you have provided your explicit consent for us to do so.

We will only contact you with marketing and related communications if you have given your express consent for us to do so, or if prior to 25 May 2018 you gave your contact details in the course of our acting for you, we are marketing similar services (i.e. our legal services), and you were given an opportunity to opt out of marketing when we first collected your information and in every subsequent marketing communication. We do not conduct Automated Decision-Making (ADM).

### Protecting your personal data

We have and will maintain effective physical, electronic, and managerial systems and safeguards to keep your personal data secure and protected. Such systems will be proportionate to the size and risk profile of our business, so can never be absolutely guaranteed.

In the course of acting for you we may need to transfer your personal data to third parties, such as the providers of our document and file management and financial systems, and other professionals working on your matter (barristers, surveyors, accountants etc). We will also require any such third parties to comply with all relevant data protection legislation. We may transfer to, store, or process personal data for marketing activities on MailChimp servers which are located in the United States. MailChimp participates in and has certified its compliance with the EU-US Privacy Shield Framework.

We will never sell your personal data to any third party without your express prior consent, and at the time of this notice we have no intention to do so.

### Accessing, altering, and deleting your personal data

You have the right to request a copy of the personal data we hold about you, in accordance with the GDPR. Please direct any such requests to [info@hatchbrenner.co.uk](mailto:info@hatchbrenner.co.uk) or in writing to our managing partner, and we will respond within one month.

Under certain circumstances you also have the right to request correction and/or erasure of personal information that we hold about you, object to processing of your personal information, request the restriction of processing, and request the transfer of your information to a third party. Further information can be provided on request.

You have the right to withdraw consent to receiving marketing communications from us, and can do so either by contacting us or by clicking on the unsubscribe links provided on our communications.

### Retention of your personal data

We will only retain your personal information for as long as necessary to fulfil the purposes we collected it for, including for the purposes of satisfying any legal, accounting, or reporting requirements. To determine the appropriate retention period for personal data, we consider the amount, nature, and sensitivity of the personal data, the potential risk of harm from unauthorised use or disclosure of your personal data, the purposes for which we process your personal data and whether we can achieve those purposes through other means, and the applicable legal requirements.

In some circumstances we may anonymise your personal information so that it can no longer be associated with you, in which case we may use such information without further notice to you. We will retain and securely destroy your personal information in compliance with data protection legislation.

### Right to complain

If you have any concerns about how we process your personal data then please direct these to our managing partner in the first instance. You are also entitled to lodge a complaint with the Information Commissioner's Office (ICO) at [www.ico.org.uk](http://www.ico.org.uk) or 0303 123 1113.

**HATCH BRENNER LLP**

Tel: 01603 660 811

[www.hatchbrenner.co.uk](http://www.hatchbrenner.co.uk)

**23 August 2018**

**HATCH BRENNER LLP**  
**Client Summary of Key Money Laundering and Facilitation of Tax Evasion Provisions**

**Money Laundering**

Introduction

Solicitors' obligations in relation to Anti Money Laundering and Combating Terrorist Financing (AML / CTF) have existed since 2002. Our profession was brought within the AML / CTF umbrella because we handle so much of other people's money – client money. We are seen as 'gatekeepers'. Those who have money to 'launder' are likely to seek to use our services in all manner of ways – some seemingly legitimate, others downright illegal. Often the matter will be 'dressed up' to look like a legitimate activity.

Solicitors are legally obliged to police likely illegal activity and if we get it wrong we are in line for severe penalties, including imprisonment. This area is policed by the National Crime Agency ("NCA").

But what is money laundering?

Money laundering is the process by which the proceeds of crime, and the true ownership of those proceeds, is changed so that the proceeds appear to come from a legitimate source. There are three acknowledged stages of money laundering. First the "placement". This occurs when cash generated from crime is placed in financial systems. The middle stage is "layering". After the proceeds of crime have been placed into the financial system, layering occurs when the money passes through a series of complex transactions in order to obscure the origin. Finally "integration" concludes the laundering process. Once the origin of the funds has been obscured, the funds can reappear as legitimate funds or assets.

Whilst the above may conjure pictures of drug running and multinational crime syndicates, money laundering is now deemed to occur not only in such sensational examples as above, but also the perhaps more mundane areas of tax evasion and benefit fraud. Moreover, there is no "de minimis" rule. A ten pound "cash in hand job" could be sufficient to oblige us to take action.

The substantive law

There are two quite separate issues to consider.

Firstly, we must be aware of the **primary money laundering offences** as set out in the Proceeds of Crime Act 2002 ("POCA").

Secondly, we must abide by the duties imposed on us by reason of coming within the "**regulated sector**". This commenced on 1 March 2004 by way of the Money Laundering Regulations 2003 ("ML Regs 2003"). The ML Regs 2003 have been repealed and replaced most recently by the Money Laundering Regulations 2017 ("ML Regs 2017").

THE PRIMARY MONEY LAUNDERING OFFENCES

Section 330 POCA – failure to report

This first offence straddles our obligation within the regulated sector and the primary offences. Section 330 of POCA relates to failures to report knowledge or suspicion of money laundering acts within the regulated sector.

Section 19 of the Terrorism Act 2000

This provides that anyone must report as soon as practicable to a constable (or the NCA) if they know or suspect that another person has committed a terrorist financing act based on information which came to them in the course of their working life.

Section 327 POCA

Under Section 327 it is an offence to conceal, disguise, convert, transfer or remove criminal property from England and Wales, Scotland and Northern Ireland. Concealing or disguising criminal property is widely defined to include concealing or disguising its nature, source, location, disposition, removal, ownership or any right connected with it.

Section 328 POCA

Under section 328 POCA it is an offence to become involved in an arrangement which a person knows or suspects will facilitate the acquisition, retention, movement or control of criminal property by someone else. Arrangement is a wide term and can include, but is not limited to, transactions. We must be particularly aware of this section as land and matrimonial transfers/arrangements blighted by money laundering will fall within the definition of the offence.

Section 329 POCA

Under section 329 it is an offence to acquire, use or have possession of criminal property. Solicitors can easily become embroiled in these offences. Where they have knowledge or suspicion that their client (or another party) has committed a money laundering act they must report the matter to the NCA or risk going to prison themselves. Moreover, if a solicitor *should* have had knowledge or suspicion, the same applies. Solicitors must be on their guard.

Sections 333 and 342 – tipping off

An offence is committed under Section 333 if you "tip off" the money laundering suspect that a report is being made to the Money Laundering Reporting Officer ("MLRO") or to the NCA. An offence is committed under Section 342 if an investigation into money laundering is prejudiced by informing either the person who is the subject of the report or even someone other than the person named in the report.

THE OBLIGATIONS LAID DOWN BY THE ML REGS 2017

Solicitors have been subject to money laundering regulations since 2004. The most recent regulations came into force on 26 June 2017.

We are obliged to establish such procedures of internal control and communication as may be appropriate for the purpose of forestalling and preventing money laundering. These include appointing a MLRO and ensuring that all relevant clients are accurately identified.

Failure to comply with the ML Regs 2017 is an offence in itself, irrespective of whether money laundering has actually taken place.

The offences mentioned above apply as much to our clients as they do to us. If another party has acted suspiciously, we will assist our clients in protecting themselves. Whilst we hope it never happens, our clients need to be aware that if we suspect them of wrongdoing, our hands are tied. In many circumstances, we will have to report them to the NCA.

## Facilitation of Tax Evasion

Tax evasion is a serious criminal offence and those who become involved with the process of tax evasion are being targeted by the Government.

The Criminal Finances Act 2017 ("the Act") came into effect on the 30 September 2017. The Act creates two corporate offences ("Corporate Offences") aimed at businesses that fail to put measures in place to prevent employees, agents and others who provide services for and on their behalf ("Associated Persons") from facilitating tax evasion.

The partners of Hatch Brenner LLP are committed to ensuring that Associated Persons do not become involved in facilitating tax evasion either in the UK or abroad.

### **HATCH BRENNER LLP ADOPTS A ZERO TOLERANCE TOWARDS TAX EVASION AND THE FACILITATION OF TAX EVASION. ITS STAFF AND OTHER ASSOCIATED PERSONS ARE REQUIRED TO COMPLY WITH THESE REQUIREMENTS.**

The Government believes that corporate entities should be criminally liable where they fail to prevent Associated Persons from criminally facilitating tax evasion.

The Corporate Offences will be committed where a corporate entity (typically a company or partnership) fails to prevent an Associated Person from criminally facilitating the evasion of tax.

The relevant provisions of the Act focus on the failure of businesses to prevent the tax evasion crimes of Associated Persons rather than trying to attribute criminal tax evasion acts to the relevant business.

There are three stages that apply to the Corporate Offences.

**Stage one:** Criminal tax evasion by a taxpayer (this could be an individual or a legal entity) under existing law. Any fraudulent activity that intends to divert funds from HMRC or the Department of Work and Pensions is likely to be regarded as tax evasion and this applies to taxes such as income tax, corporation-tax, inheritance tax, capital gains tax, value added tax, national insurance and stamp duty land tax.

**Stage two:** Criminal facilitation of the tax evasion by an Associated Person. This involves an Associated Person knowingly, deliberately and dishonestly assisting another person or entity to evade tax.

**Stage three:** Failure on the part of the relevant corporate entity to prevent its Associated Persons from committing the stage two criminal facilitation offences.

As mentioned above the Act created two new Corporate Offences. One relates to UK tax evasion facilitation offences and the other relates to foreign tax evasion facilitation offences. The foreign offence operates in a similar way to the domestic offence so that the three required stages mentioned above apply equally to the foreign offences.

The foreign offence can only be committed by a corporate entity:

- incorporated under UK law, for example a limited company incorporated under UK law;
- carrying on a business or other undertaking from a permanent establishment within the UK, for example a company incorporated under the law of France but operating from an office in London;
- whose Associated Person is located within the UK at the time of the criminal act that facilitates the evasion of the overseas tax, for example a company incorporated under German law whose employee helps another person to commit a foreign tax evasion offence whilst in London.

The Act also requires that there is "dual criminality" in order to prosecute a foreign tax evasion facilitation offence. In broad terms this means that if stage two above is reached in relation to a criminal tax evasion offence in a foreign jurisdiction it also has to be shown that it would have been an offence under UK law had the offending conduct been carried out in the UK.

**Whilst we hope it never happens, our clients need to be aware that if they ask our partners and staff to assist them in what they know to be tax evasion, our retainer will be terminated immediately and consideration will be given to our obligations to report the matter to the NCA. In circumstances where the client seeks our assistance in a scheme which may be tax avoidance (legal) or tax evasion (illegal), our clients need to be aware that we will insist on an open letter being written to the relevant Tax Authority so that they are able to consider and, if they desire, challenge the scheme our client is putting forward. If our client refuses, our retainer will again be terminated immediately and we will consider our anti Money Laundering obligations to report.**

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