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CLIENT IDENTIFICATION AND VERIFICATION

Interpretation Guidelines

Revised September 2009

INTERPRETATION GUIDELINES:
CLIENT IDENTIFICATION AND VERIFICATION

On December 31, 2008, new client identification and verification rules were implemented. The rules apply to both new and existing clients, with regard to any new matter arising on or after December 31, 2008.

They appear in Rules 118.1 through 118.10 of the Rules of the Law Society of Alberta. To view the Rules, [click here](#). An earlier version of the Rules was in place at the implementation date, and the Rules in their current form were adopted by the Benchers on February 6, 2009.

The Rules are based on the Model Rule of the Federation of Law Societies of Canada (the "Federation"). To view the Federation's Model Rule, [click here](#).

The following interpretation guidelines are provided to assist lawyers in understanding and interpreting the new Rules. The law societies and the Federation wish to ensure that the Rules are interpreted in a consistent manner throughout the country, and the following interpretations have been considered by a working group appointed by, and working in conjunction with, the Federation.

EXCEPTIONS:

The following are exempt from both identification and verification:

- a) In-house counsel, providing legal services to an employer;
- b) Lawyers acting as agents for other lawyers who have already identified or verified the client; or
- c) Lawyers acting for clients who have been referred by other lawyers who have already identified or verified the client.

If (b) or (c) apply, record your efforts to ascertain that the lawyer who has referred the client to you, or retained you as agent, has completed the client identification and verification process. You must exercise due diligence to satisfy yourself that the other lawyer has already identified the client. Simply asking the other lawyer to confirm that he/she has complied with the requirements of the rule, and documenting the result of your conversation, should be sufficient. The other lawyer must be licensed to practice in another Canadian jurisdiction. For the purposes of these Rules, foreign lawyers are not included in the definition of "lawyer".

Duty counsel, providing legal services as part of a duty counsel program sponsored by a non-profit organization, are exempt from client identification requirements. Verification may be required, however, if the lawyer is involved in a matter involving the receipt, payment or transfer of funds, other than an electronic funds transfer.

CLIENT IDENTIFICATION vs. VERIFICATION

The new rules contain two distinct concepts of *identification* and *verification*.

Identification requirements apply whenever a lawyer is retained to provide legal services of any nature to a client. The lawyer must obtain basic identification information about individual or organizational clients in every retainer.

If a client does not want to provide the required information, you must explain that all lawyers are required to ask clients for this information and you need it to properly represent the client. If the client still refuses, you must advise the client that you will be in breach of the Rules of the Law Society if you do not get the information and your professional obligations prevent you from acting. A refusal to provide information is different from the inability to do so. If the client is jobless, homeless or has no phone number, he or she obviously cannot provide information that does not exist. The lawyer should simply record the results of any inquiries on the file.

Verification requirements arise when a lawyer, who has been retained by a client to provide legal services, engages in or gives instructions in respect of the receipt, payment or transfer of funds, subject to certain exceptions. By definition, “funds” include shares and negotiable instruments¹.

In the verification process, information gathering goes beyond obtaining basic identification, and requires that the lawyer make reasonable efforts to obtain and retain copies of information which may be used to confirm that the client is who or what they say they are.

In most cases, asking your client for the information will be sufficient, or you may be able to access public registries. Although not required by the Rules, it would be prudent to record the efforts you have made if you are not able to obtain the verification information. It is, however, important to note that the rules contemplate the use and retention of reliable independent source documents in the case of both individuals and organizations. If a lawyer is unable to obtain any independent and reliable source documents, the lawyer must consider whether he or she is able to act. The obligation to assess the sufficiency of verification efforts continues throughout the retainer.

What does it mean to be “retained”?

In the case of non-profit legal clinics or law lines, which provide summary legal advice, the lawyer will not be retained within the meaning of the Rules and client identification requirements will not apply. This will also apply to lawyers who provide summary advice over the phone and who are not subsequently retained in the traditional sense. For example, Brydges counsel or private criminal defence counsel who provide summary advice to drivers who have been apprehended on suspicion of drunk driving, or who have been otherwise detained, are providing summary legal advice which does not trigger the application of the Rules. If, however, the lawyer charges fees or disbursements for summary advice in the context of a consultation, then the Rules will apply even if no ongoing retainer subsequently results.

If the lawyer agrees to represent the person and otherwise enters into a retainer in the traditional sense, the obligations under the Rules will obviously be triggered. If a lawyer in a

¹ “funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them.

non-profit clinic agrees to the ongoing representation of a client, the Rules will also apply, even if the client is not paying fees for the lawyer's services.

If a lawyer acts as a friend of the court, assisting an unrepresented party on his or her own initiative, or at the request of the court, the Rules will not apply unless the services move beyond the provision of summary legal advice. If the lawyer charges a fee or undertakes to represent the individual on an ongoing basis, the Rules will apply.

Lawyers acting as mediators are generally not retained for the purpose of providing legal advice. Lawyer and non-lawyer mediators can prepare minutes of settlement and enter into mediation agreements with clients, and this work does not constitute legal advice. If, however, lawyer mediators provide legal advice or legal services, they are required to identify the lawyers and the clients who are parties to the mediation.

The rules apply to new "matters" arising on or after December 31, 2008. The question is not whether you have opened a new file since the rules were enacted, but whether you have been retained to provide legal services on a new matter. Lawyers will still be required to identify or verify clients' identities, even if acting on a general retainer which does not require the opening of a new file, if they are commencing work on a new matter.

Acting as a notary or commissioner for oaths

If a lawyer is simply acting as a notary or commissioner, and is providing no legal advice or other services, the client identification and verification Rules will not apply. If, however, a lawyer is notarizing a guarantee acknowledgement certificate, this would generally involve legal advice as well and would trigger the application of the Rules. Lawyers should still obtain and copy identification when acting as notaries or commissioners, regardless of whether these Rules apply.

CLIENT IDENTIFICATION

If the exceptions do not apply, obtain and record the following information:

For Individuals

- a) the client's full name;
- b) the client's business address and business telephone number, if applicable;
- c) the client's home address and home telephone number;
- d) the client's occupation.

The client does not need to be employed to have an "occupation" and his or her occupation may be that of homemaker, retiree, volunteer, caregiver, etc.

For Organizations²

- a) the client's full name, business address and business telephone number;

² "organization" means a body corporate, partnership, fund, trust, co-operative or an unincorporated association

- b) the client's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable, unless the client is a financial institution³, public body⁴ or reporting issuer⁵;
- c) the general nature of the client's business or activity in which the client is engaged unless the client is a financial institution, public body or reporting issuer;
- d) if an individual is authorized to instruct counsel on behalf of the organization, and actually instructs counsel in a matter for which the lawyer is retained, obtain the individual's:
 - a. name
 - b. position
 - c. contact information

Third Parties

If the client is acting for or representing a third party, you must collect the same information about that third party as if they had retained you directly, consistent with the foregoing guidelines for individuals and organizations.

³ "financial institution" means:

- i) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies,
- ii) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,
- iii) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- iv) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- v) a trust company or loan company regulated by a provincial Act,
- vi) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public; or
- vii) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

⁴ "public body" means

- i) a department or agent of Her Majesty in right of Canada or of a province,
- ii) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them,
- iii) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Government Act* or similar body incorporated under the law of another province or territory,
- iv) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
- v) a body incorporated by or under an Act of a province or territory of Canada for a public purpose, or
- vi) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

⁵ "reporting issuer" means:

- i) a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory;
- ii) a corporation whose shares are traded on a stock exchange designated under section 262 of the *Income Tax Act* (Canada) and that operates in a country that is a member of the Financial Action Task Force;
- iii) a subsidiary of an entity mentioned in clause (i) or (ii) where the financial statements of the subsidiary are consolidated with the financial statements of the entity.

The test for whether a third party's identity must be identified, in accordance with these Rules, depends on whether that third party is directing or instructing, or has authority to direct or instruct, the client, as a principal instructs an agent. A third party may otherwise have a beneficial interest in the transaction, but is not subject to identification or verification requirements if that third party does not have the authority to direct the client. The fact that there are parties who might benefit from or be affected by the actions of the client is not sufficient to trigger the obligation to identify them or verify their identity.

It might not be apparent when you first meet with your client that there is a third party involved in the transaction, and the client may not offer this information. Lawyers should, therefore, make this inquiry at the time of entering a retainer.

Lawyers are not otherwise obligated to identify or verify non-clients, from whom funds may be received for the client's or third party's benefit. Lawyers are also not obliged to identify or verify the identity of non-clients to whom clients are paying or transferring funds.

Minors do not need to be verified as they technically do not have the power or authority to instruct those acting on their behalf.

CLIENT VERIFICATION

Client verification will be required where a lawyer, retained to provide legal services, engages in or gives instructions with respect to the receipt, payment or transfer of funds. Verification is required not only when funds pass through a lawyer's trust account, but also when funds pass directly between the parties to a transaction, for example. The provision of legal advice about a matter involving funds does not trigger the verification obligations unless you are also giving instructions for the movement of funds, which may include the preparation of documents containing such instructions.

These requirements will be subject to the following exceptions and guidelines.

Exceptions

In addition to the exceptions earlier listed, client verification requirements are not applicable:

- a) when the client is a financial institution, public body or reporting issuer;

or when funds are:

- b) received, paid or transferred by electronic funds transfer⁶;

⁶ "electronic funds transfer" means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the Financial Action Task Force, where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities.

- c) paid by or to a
 - financial institution,
 - public body, or
 - a reporting issuer;
- d) received by a lawyer from the trust account of another lawyer;
- e) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- f) paid or received pursuant to a court order or to pay a fine or penalty;
- g) paid or received as a settlement of any proceedings⁷; or
- h) paid or received for professional fees, disbursements, expenses or bail.

If a lawyer relies on an exemption, it would be prudent to record on the file the basis on which the lawyer determined the exemption applied.

Settlement of legal actions:

Settlements reached prior to the commencement of a proceeding, as defined, are not exempt from the verification rules.

The exemption applicable to funds paid by or to a financial institution:

If you are acting for an individual in a matter requiring financing, the exemption applies to the funds which are provided by the bank pursuant to the mortgage or loan agreement. The exemption does not allow you to avoid verifying your client's identity if they bring you a certified or regular cheque, a bank draft, or any other form of payment.

Exemption for funds received from trust:

The exemption applies to funds received by a lawyer from the trust account of another lawyer within Canada. This exemption does not relieve a lawyer from the obligation to verify the identity of a client who subsequently receives funds from the lawyer's trust account. In essence, each transfer of funds must be considered independently, even if occurring within the same matter or transaction in which another transfer may be exempt.

Consider a real estate matter in which a vendor's lawyer receives proceeds of sale into his or her trust account from the trust account of the purchaser's lawyer. Payments made to financial institutions from those funds to pay out mortgages are exempt and would not trigger verification requirements, but a payment to the individual vendor triggers the client verification rules. It is, however, a matter of good practice in any real estate transaction to verify the identity of your vendor or purchaser client, regardless of whether these rules apply.

⁷ "proceedings" means a legal action, application or other proceeding commenced before a court of any level, a statutory tribunal in Canada or an arbitration panel or arbitrator established pursuant to provincial, federal or foreign legislation and includes proceedings before foreign courts.

Electronic fund transfers

While there is an exemption when funds are received, paid or transferred by electronic funds transfer, the exemption does not allow a lawyer to avoid verification of a client when the client has paid the funds to the lawyer by another means and they have been deposited to that lawyer's trust account, in anticipation of an electronic transfer to another party. Conversely, if the funds come in by wire and go out by cheque, the client's identity must also be verified.

FATF Countries

The definitions of "reporting issuer" and "electronic funds transfer" refer to countries which are full members of the Financial Action Task Force. A corporation that operates in at least one country that is a member of the Financial Action Task Force (the "FATF"), and which otherwise meets the definition of a reporting issuer is covered by the exemption even if it also operates, or is headquartered, in countries that do not belong to FATF. It is not sufficient if the organization operates in a country which is a member of the Gulf Cooperation Council, for example, which is an organization which is a member of FATF. To be covered by the exemption, an organization or corporation must operate in a country that is a full member of FATF and is subject to its mutual evaluation process with regard to anti-money laundering and counter terrorist financing measures.

Member countries are listed at

http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236869_1_1_1_1_1,00.html.

Verification of Individuals' Identity

Lawyers must verify the identity of individuals at the time the lawyer engages in or gives instructions with respect to the receipt, payment or transfer of funds. The following requirements apply to individual clients or to individuals instructing counsel on behalf of organizations. They also apply to third parties who may be instructing the client, or on whose behalf the client is retaining counsel.

- a) Take reasonable steps to verify the individual's identity.
- b) If meeting the client face-to-face, obtain and retain copies of reliable, independent source documents, data or information, which may include valid original government issued identification, such as:
 - driver's license,
 - birth certificate,
 - provincial or territorial health insurance card, where permitted
 - passport,
 - other similar records.
- c) If the individual client is not physically present but is elsewhere in Canada,
 - verify the client's identity by obtaining an attestation from a commissioner for oaths or a guarantor in Canada,

- the commissioner or guarantor must confirm that he or she has seen one of the independent source documents summarized in subparagraph (b),
- the attestation must:
 - be produced on a legible copy of the independent source document being used to verify the client's identity
 - contain a statement that the person providing the attestation has seen the identifying document
 - include the type and number of the identifying document provided by the client, and
 - include the name, profession, address and signature of the commissioner for oaths or guarantor in Canada.

See the website ([click here](#)) for a sample form of wording for an attestation.

- A guarantor may be a(n):
 - dentist
 - medical doctor
 - chiropractor
 - judge
 - magistrate
 - lawyer
 - notary (in Quebec)
 - notary public
 - optometrist
 - pharmacist
 - professional accountant, including an Accredited Public Accountant, Chartered Accountant, Certified General Accountant, Certified Management Accountant, Public Accountant or Registered Public Accountant
 - professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec]) or Eng. [Engineer, in Quebec])
 - veterinarian
 - peace officer
 - paralegal licensee in Ontario
 - nurse
 - school principal

Lawyers must exercise their own due diligence to ascertain that the person providing the attestation is eligible to do so.

- d) If the client is not physically present and is outside of Canada,
- retain an agent to verify the client's identity,
 - enter a written agreement with the agent (see the website for a sample form),
 - the agent may prepare an attestation in the form discussed below,
 - obtain the information obtained by the agent under the agreement.

An agent may also be used if the client is present elsewhere in Canada. You may consider using an agent, if, for example, the client is located in an area where commissioners for oaths or guarantors are not readily available.

An out-of-country agent should be chosen with a view to the professions in the list of allowable guarantors. The Rules deliberately do not specify the type of foreign agent which will be required, so as not to be unduly restrictive. Typically, you will first search for a lawyer or notary, or the equivalent thereof, in the relevant jurisdiction; then seek someone from another regulated profession. Any reliable person may act as an agent.

The rules do not govern payment arrangements with commissioners, guarantors or agents.

- e) Lawyers may rely on faxed or scanned copies of attestations and/or identification, but you must also make arrangements to receive the original copies from the agent, commissioner for oaths, or guarantor. All documents must be clear and legible.
- f) Individuals who are clients or third parties, or those instructing the lawyer on behalf of an organization, must have their identity verified immediately and prior to the lawyer engaging in or giving instructions in respect of the receipt, payment or transfer of funds.
- g) When you have verified the identity of an individual, you are not required to do so again if you recognize the person.
- h) Lawyers' responsibilities under the identification and verification rules may be fulfilled by any associate, lawyer or employee of the lawyer's firm, wherever located. Lawyers may rely on the identification and verification of identity previously obtained by another lawyer in the firm. Verification efforts must be completed face-to-face by either the firm, or the selected guarantor, commissioner or agent on the firm's behalf.
- i) Lawyers within the same firm are permitted to rely on the information collected by other members of the firm, even if that information is collected by an office of the firm in another Canadian jurisdiction.

Verification of Organizations' Identity

If the client or third party is an "organization":

- a) Take reasonable steps to verify the organization's identity;
- b) Obtain what you reasonably consider to be reliable, independent source documents, data or information and retain a copy of every document on which you rely;
- c) If the organization is a corporation or society created pursuant to legislative authority, a lawyer should consult a government registry or the client to obtain:
 - written confirmation of the existence, name and address of the organization,
 - the names of its directors,
 - appropriate source documents, including certificates of corporate status or annual returns,

- any other similar records which may confirm an organization's existence,
- minute books, where available

These Rules are not exhaustive, and the lawyer may rely on any reliable documents, even those not from government sources. In many cases, asking your client for the information will suffice. It may also be appropriate to consult corporate minute books, where available, or an on-line corporate registry search.

d) Where the organization is not a corporation or society, and is not registered in a government registry, independent source documents which may be used to verify the identity of a client include:

- copies of constating documents,
- articles of association,
- partnership agreements,
- in the case of a trust, documents establishing or amending the trust and identifying the trustees,
- other records that confirm the organization's existence, which may include GST registration information or information related to the client's business license. (A GST/HST registry is available on the CRA website at <http://www.cra-arc.gc.ca/esrvc-srvce/tx/bsnss/gsthstrgstry/menu-eng.html>, though you must already have the registrant's business name, GST number and a transaction date to use the service.)

e) When the client, or the relevant third party, is an organization, make reasonable efforts to obtain and record:

- the name and occupation of all directors, other than when the organization is a securities dealer⁸, and
- the names, addresses and occupations of all persons who own 25% or more of the organization or shares in the organization

When dealing with an organization having different classes of shares, the ownership of voting shares is determinative.

The rule does not absolutely require that a lawyer obtain the names of owners and directors, but only that the lawyer makes reasonable efforts to do so and record the information if it is obtained. It would be prudent, therefore, to record the efforts made. Consider, however, whether the inability to ascertain the information indicates a problem.

f) Verify the identity of the organization within 60 days of engaging in or giving instructions with respect to the receipt, payment or transfer of funds. If, however, you are unable to verify the client's identity after taking all reasonable steps, you will not be in breach of this requirement. It is prudent to satisfy yourself about the identity of your client as early as possible in the retainer, notwithstanding these rules;

⁸ "securities dealer" means "a person or entity authorized to engage in the business of dealing in securities or other financial instruments or to provide portfolio management or investment advising services".

- g) Agents, commissioners and guarantors are not required to verify organizational clients, as documents are used to complete verification, subject to jurisdictional differences and requirements;
- h) When you have verified the identity of the client organization and obtained the necessary information, you are not required to do so again. You must be diligent, however, to ascertain whether there have been any changes in the identity or ownership of the organization and in determining whether the instructing individual is still authorized to act in that capacity.

RECORD-KEEPING

- Obtain and retain a copy of every document used to verify the identity of any individual or organization.
- Keep either paper copies, or record in an electronic or machine-readable form, such that a paper copy can be readily produced.
- Keep identification and verification information and documents for the longer of:
 - the duration of the lawyer and client relationship, and for as long as is necessary for the purpose of providing service to the client, and
 - at least six years following completion of the work for which the lawyer was retained.
- If you were retained in a particular matter before December 31, 2008, identification, verification and record keeping requirements are not applicable for that matter.
- Identification, verification and record keeping requirements are applicable for all matters for which you were retained after December 31, 2008, for new and existing clients.
- You may keep the information on your client file rather than maintaining a separate file.

CRIMINAL ACTIVITY AND DUTY TO WITHDRAW

If retained in a new matter after December 31, 2008, and, in the course of completing client identification or verification, you know or ought to know you would be assisting the client in fraud or other illegal conduct, you must withdraw.

While retained in any matter arising before or after December 31, 2008, if you know or ought to know at any time that you are assisting a client in fraud or other illegal conduct, you must withdraw.

SAMPLE SCENARIOS

Verification of Instructing Individuals within an organization: In some cases, there may be one senior person instructing counsel, while you will also receive instructions from several other employees on discrete aspects of the same matter. If you are satisfied that an individual is responsible for the instructions you are receiving from others in the corporation, it may be sufficient to verify his or her identity only. If, however, no instructing individual has overall responsibility for the instructions given by others, you must verify the identity of each person instructing you on behalf of the corporation.

The rule does not require that you investigate the assertion that an individual is authorized to instruct you on behalf of an organization client. You should always, however, exercise prudence and make further inquiries to satisfy yourself if you have concerns.

Wills and Estates: When you are preparing a will, and the only funds changing hands are fees, identification requirements apply. There is an exemption from the verification requirements when fees are paid. When, however, you are distributing the proceeds of the estate, you would be obliged to verify the identity of the executor or administrator of the estate. You are not obliged to identify the beneficiaries, as they are not clients nor are they generally in a position to instruct the client.

While beneficiaries under an estate or trust would not be considered “third parties” in the normal course, there may be situations in which a beneficiary is instructing the trustee client. In such a case, the beneficiary would have to be identified as a third party.

Power of Attorney: The analysis of whether the donor of a power of attorney is a third party, whose identity must be verified, is a question of fact in each case. If, for example, the donor has executed a power of attorney allowing his attorney to sign land transfer documents while he is on holidays, but still instructs the attorney and/or the lawyer, the donor’s identity must be verified before a financial transaction can be completed. Accordingly, when drafting a power of attorney for a client, you may wish to complete the verification process at the time of execution.

Litigation: The preparation of an offer of settlement is not a legal service that attracts the verification requirements, though the client must be identified. If you then receive settlement funds, you must be careful to consider the status of your litigation matter. If you have not yet filed a statement of claim, the verification requirements may apply, subject to the potential application of other exemptions.

Class Actions: When representing plaintiffs in a class action, the lawyer need only identify the representative plaintiff.

Insurance litigation matters: Whether you are in-house with an insurer or outside counsel, case law states that you act for both the insurer and insured when you are defending a claim against an insured under a liability policy. The client identification and verification rules will normally apply with respect to the insurer and the individuals instructing you on behalf of the insurer. Special considerations may apply with regard to your obligations to identify or verify the identity of the insured.

If you are in-house counsel for the insurance company, you need not identify or verify the identity of the insurance company that employs you. If you are outside counsel, you have an obligation to identify the insurer and the individual instructing you, such as a claims examiner. In

the event the verification rules are triggered, you have an obligation to take reasonable steps to verify the identity of the insurer and instructing individuals, unless certain exemptions apply.

If and when settlement funds may become payable, you should consult the rules with regard to whether verification is necessary or whether an exemption might apply. If the matter is settled or a judgment is rendered after the claim has been filed, you may not be required to verify the client's identity. If settled prior to filing a claim, however, the rules may require you to verify their identity. The status of the insurance company (i.e., if it is a "financial institution", "public authority" or a "reporting issuer") may also determine if the insurer (and consequently its instructing individual) is exempt from the verification process.

Different issues arise when considering the identification and verification of the insured that affects outside defence counsel. In the event the insured has a right under the policy to guide and instruct counsel, and is doing so, identification and verification of the insured is required. There are many occasions in which the insured may be difficult or impossible to locate during the course of the retainer. In such cases, defence counsel is not obliged to decline the retainer simply because the insured cannot be located for the purpose of completing the identification process, nor will verification of the insured be required in the event funds are transferred. If counsel is able to make contact with the insured, identification and verification information will, however, be required.

When acting as counsel in a subrogated claim, the lawyer must consider whether he/she is acting as counsel only for the insurer, or whether the lawyer is also advancing claims for the insured which fell outside the scope of coverage. At the outset of the subrogation retainer, only the identification requirements would apply. Assuming that the insurer has, by operation of law or contract, succeeded to the rights of its insured in relation to the claim, the rules require you to identify the insurance company only. If, however, the insured also has a claim which you are bringing concurrently with the subrogated claim, you must also identify the insured. In the absence of an applicable exemption, verification would be required in the event of a settlement payment made prior to the filing of a statement of claim or other formal commencement of legal proceedings, such as arbitration.

Share Pledges: When a borrower or guarantor pledges shares as security for a loan, the pledge may or will involve a transfer of physical possession of share certificates to a lender, its custodian or agent. There is, however, no transfer of beneficial ownership unless there is an event of default that entitles the lender to foreclose on the shares and become the owner, or exercise a power of sale and sell them to a third party. The situation is similar where public company shares are registered directly in the name of the borrower. When those shares are pledged, the pledgor is actually dealing with the rights to its securities account and the security entitlement in respect of those shares which the securities account gives to it. Pending default, the pledgor retains the ownership rights in the shares, including the entitlement to dividends and voting.

The definition of "funds" includes shares. The pledge of shares as security, however, does not trigger the requirement to verify the borrower's identity, though other aspects of the transaction may trigger the obligation. A share pledge will almost inevitably be part of a transaction involving a transfer of funds from lender to borrower. Unless exempt, because the lender is a financial institution or because the funds are transferred by EFT, that aspect of the transaction would require verification. A pledge of shares as security for the loan would not be a transfer of shares that requires verification of identity, as no beneficial ownership is transferred by the

pledge. In the event of a default, however, a lender may then take beneficial title to the shares, and verification obligations would apply unless the transaction is otherwise exempt.

Joint Ventures: By definition, a joint venture is not an independent legal entity, but rather a collection of organizations that have joined together for a common purpose. In such a case, each of the parties to the joint venture would be considered to be directing the affairs of the joint venture.

Union Grievances: Except in very rare cases, it is the union that has carriage of a grievance. The grievor, while clearly an interested party, is not instructing the union and, as such, is not a “third party” within the meaning of the rules. This would be true even in the case of a group or policy grievance where a large number of union members have a stake in the outcome of the matter. Where a grievor does have carriage of the grievance and is instructing the union as to how to proceed, the obligation to identify that person and, in appropriate cases, to verify him or her, would apply.

QUESTIONS?

If you have any questions or concerns about the client identification and verification rules, please contact the Law Society’s Practice Advisors at toll-free 1-866-440-4640 or 1-800-661-2135 or [click here](#).