



# **Terms of Business**

**Effective as of 1 July 2014**

## 1. Applicability

1.1 Financial Markets Lawyers Alliance (FMLA) B.V. is a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) under the law of the Netherlands, whose object is the provision of legal services and consultancy. FMLA consists of lawyers who are qualified to practice law in the Netherlands and consultants who do not possess legal qualifications. FMLA shall not advise on laws applicable in any US jurisdiction. Persons who are a direct or indirect shareholders in FMLA are referred to as "partners".

1.2 These terms of business ("**Terms of Business**") shall apply to all instructions accepted by FMLA (including, without limitation, as the same are modified or supplemented), all services offered by FMLA and all follow-up or supplemental instructions, and to all legal relationships that arise as a result thereof. These Terms of Business are to be read and construed in conjunction with the terms and conditions set out in the confirmation of the engagement sent by FMLA to its (prospective) clients ("**Confirmation**").

1.3 These Terms of Business are for the benefit not only of FMLA, but also all those directly or indirectly involved in the instruction, including natural and legal persons and/or third parties engaged by FMLA in connection with the execution of an instruction, and they are also for the benefit of all other persons for whose acts or omissions FMLA or FMLA may be held liable.

1.4 These Terms of Business apply to all generic services provided by FMLA, such as making its website available or permitting public access by other electronic means, or making printed publications available.

## 2. Instruction and services

2.1 An instruction shall come into existence when confirmed by FMLA in a Confirmation. Services provided in respect of an instruction are provided exclusively for the client, unless otherwise agreed in writing. Third parties may not use, claim any rights in respect of and/or rely on the results of services performed for the client.

2.2 All instructions shall be deemed to have been accepted by FMLA as an organization, even if it is the client's express or implied intention that an instruction be carried out by a specific individual. The applicability of Article 404, Book 7 of the Dutch Civil Code (regulating the carrying out of engagements by specific individuals) and Article 407(2) Book 7 of the Dutch Civil Code (which imposes joint and several liability where an instruction is given to two or more persons), are hereby expressly excluded by FMLA and the client.

2.3 FMLA may at its sole discretion determine which of its lawyers and/or legal advisors and/or consultants shall be involved in the execution of an instruction. If necessary, FMLA may engage third parties in connection with the execution of an instruction. FMLA is not liable for any acts or omissions of third parties or for any resulting damage or loss. FMLA will take due care in selecting its own lawyers and/or legal advisors and third parties, basing selection on factors such as possession of relevant knowledge, experience and specific expertise. FMLA is entitled to select individuals who are not registered as lawyers in the Netherlands

and/or who may not possess legal or other professional qualifications.

2.4 FMLA is responsible for the services it provides, whether that be in the execution of an instruction, follow-up or supplemental instructions or services provided as part of broader mandate which is executed in cooperation with other advisers. FMLA is not obliged to carry out instructions which it considers to be inappropriate. FMLA is authorized to determine at its sole discretion how to execute each instruction received by it, and to determine whether alterations or amendments to its legal advice, opinions and/or (model) documentation made by the client and/or third parties are acceptable.

2.5 Any instruction giving rise to services (including but not limited to drafting of legal advice, opinions and/or (model) documentation which are delivered to a third party, a group of third parties or that may be relied on or otherwise disclosed to third parties, are only accepted by FMLA on the condition that the client shall indemnify FMLA against any claim arising from any such third party. FMLA is entitled to take any steps necessary to verify whether the client is able to provide such an indemnity.

## 3. Identification, client acceptance and conflict of interests

3.1 By accepting these Terms of Business the client acknowledges that in connection with legislation (including the Dutch Prevention of Money Laundering and Financing of Terrorism Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*)) and/or regulations or codes of practice (whether or not in written form) to which FMLA wishes to adhere, FMLA is entitled to submit the client (and any ultimate beneficial owner) to client acceptance procedures and to evaluate from time to time pending instructions and on the basis of the results may either revise the terms on which FMLA accepted the instruction and/or inform the proper authorities of any unusual transactions without notifying the client.

3.2 Unless agreed otherwise, FMLA shall not act for the client if the services to be provided are directly contradictory to the interests of an existing client and give rise to a conflict of interests. In order to prevent conflicts of interests arising, FMLA is entitled to share relevant information within FMLA and with relevant third parties.

3.3 Except as specified in article 3.1 and article 3.2, FMLA is authorized to act for any client even if that client is a direct competitor of an existing client.

## 4. Communication

4.1 The client and FMLA may exchange information verbally, in writing, by unencrypted e-mail.

4.2 When communicating via electronic means the client, FMLA and any third party are each individually responsible for ensuring the security of their respective computer systems and messages.

4.3 It is the client's responsibility to verify that any email or other digital messages sent to FMLA that it

deems important have reached the addressee intact and on time.

## 5. Fees and payment

5.1 FMLA shall invoice its professional fees on a regular basis, based on the actual hours worked multiplied by its current hourly rates. A list of FMLA's current hourly rates shall be supplied to clients upon request. All amounts are exclusive value added tax. FMLA's US general office costs are included in the hourly rate of the relevant partners or employees.

5.2 Disbursements such as court fees, courier charges, chamber of commerce charges, counsel's fees, overseas legal fees, travel and accommodation expenses, and translation charges shall be charged separately.

5.3 Alternative invoicing arrangements - including fixed price arrangements - are only valid if agreed in advance in writing. All cost estimates are given on the basis of information provided by the client and the circumstances known by FMLA at the time. FMLA shall inform the client if a given cost estimate is likely to be exceeded.

5.4 FMLA may modify its charge out rates once a year without notice.

5.5 Invoices are payable within fourteen (14) days of the invoice date, without client having the right to set off or otherwise settle the amounts due. In the event of late payment, FMLA is entitled, to charge the statutory interest rate from and including the fifteenth (15th) day after the invoice date. If following written notice, payment remains outstanding, collection costs may also be imposed and any ongoing work suspended. FMLA accepts no liability for the suspension of its service due to the client's failure to settle an invoice.

## 6. Confidential information and archive

6.1 All client-related information which comes into FMLA's possession as a result of its provision of services, either directly, via third parties or as a result of its own observations, shall be treated with the utmost care. FMLA shall use the information only for execution of the instruction and provision of services.

6.2 FMLA is entitled to share confidential client information with its external auditor, professional liability insurer and third parties if required by legislation. FMLA shall be also entitled to provide the information to the client's external auditor upon receipt of a lawyers' letter in connection with a regulatory audit, regardless of whether FMLA has confirmation that the client has approved the issue of the lawyers' letter or FMLA's response.

6.3 If as a result of its provision of services to a client, FMLA comes into possession of confidential information, FMLA is not entitled to use that information for the benefit of other clients for whom that information may be relevant and, if necessary, FMLA will take appropriate action to maintain the confidential nature of that information. FMLA shall not be unable to act, simply by virtue of its being in possession of confidential information relating to one client which may be relevant to another client.

6.4 FMLA shall archive documents and files relating to its instructions for a minimum period of ten (10) years, after which time FMLA is free to destroy files and/or documents.

## 7. Liability

7.1 If any liability for damage or loss arises from or in connection with the execution of an instruction by FMLA, one of its lawyers and/or consultants or by any third party engaged by FMLA to provide services shall be limited to the amount paid out under the professional liability insurance taken out by FMLA or one of its affiliated companies, plus the amount of the deductible that is to be borne by FMLA.

7.2 If, for whatever reason, no payment is made under the professional liability insurance referred to in article 7.1, the claim for compensation shall be limited to a sum equal to two times the fees paid by the client to FMLA in the corresponding calendar year for the services directly relating to the instruction in connection with which the damage or loss arose, subject to a maximum amount of EUR 500,000 (Five Hundred Thousand euros).

7.3 With reference to article 4.2 of these Terms of Business, neither FMLA nor any third party engaged by FMLA in connection with an instruction, shall be liable to the client or any other party for damage or loss in connection with transmitted computer viruses, including damage or loss of data files, other files or data on computer systems or costs for correcting or repairing damage or loss.

7.4 Any claim asserted by the client (whether in or outside of court proceedings) lapses if not submitted to FMLA in writing within one year of the date the client became aware, or could reasonably have become aware, of the facts on which the claim is based.

## 8. Termination of the instruction

8.1 The client is entitled at any time to terminate an instruction without cause with immediate effect by giving notice in writing to FMLA.

8.2 FMLA is entitled at any time to terminate an instruction and cease provision of services with immediate effect by giving notice in writing to the client without specifying the reasons if FMLA considers that the instruction and services cannot reasonably be continued. Examples of circumstances where this may occur are:

- If a client or one of its employees does not comply with the terms of the instruction, even after the client has been made aware of this;
- If there is a conflict of interest as a result of which FMLA considers that it can no longer provide its services to the client or third parties, as mentioned in clause 2.5 of these Terms of Business;
- If it appears that the client furnished incorrect or incomplete information about itself, the relevant ultimate beneficial parties, its employees, related third parties, and/or facts and circumstances which the client could

reasonably be expected to understand were relevant for the acceptance and performance of the instruction by FMLA;

- If the client, the relevant ultimate beneficial owners, its employees and related third parties are subject to or involved in insolvency or equivalent proceedings;
- If there is in FMLA's opinion a relevant change of the client's policymakers or ultimate beneficial owners;
- If, as a result of amendment, restatement or implementation of legislation, the performance of the instruction would be unlawful or illegal or in conflict with professional rules.

8.3 Upon termination, FMLA shall assist with the transfer of the client's matters to another adviser, subject to payment of its fees at its usual hourly rates and costs. FMLA reserves the right to retain a copy of the file.

8.4 Upon termination, the client must settle the fees due and payable in respect of the services provided plus

costs. Article 2.1 and article 7 of these Terms of Business remain effective even after termination.

#### **9. Applicable law and jurisdiction**

9.1 All relationships arising between the client and FMLA shall be governed by and interpreted in accordance with the law of the Netherlands, unless agreed otherwise in writing.

9.2 Any disputes between the client and FMLA will be exclusively determined by the competent court in Amsterdam, the Netherlands, without prejudice to the right to appeal. Notwithstanding the provision in the first sentence of this article, FMLA shall be entitled to apply to the competent court in the jurisdiction where the client has its main activity.

#### **10. Miscellaneous**

10.1 These Terms of Business are available in both the Dutch and English languages. In the event of inconsistency, the Dutch language Terms of Business will be binding.

10.2 FMLA's Terms of Business have been filed with the registry of the District Court of Amsterdam on 7 August 2014.