**STAYING ABOVE THE CURVE: HOW LEGAL RETAINERSHIP KEEPS YOUR BUSINESS AFLOAT**

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**INTRODUCTION**

In today’s complex regulatory landscape, businesses in Nigeria face an ever-increasing web of legal obligations. From compliance with corporate governance rules to navigating sector-specific regulations, failing to meet these obligations can result in penalties, lawsuits or even operational shutdowns. Many businesses only seek legal assistance when a crisis arises, but this reactive approach can be costly and disruptive.

A legal retainership agreement offers a proactive solution by providing businesses with continuous legal support. This article explores the concept of legal retainership and how it can help businesses stay ahead of regulatory challenges.

**UNDERSTANDING LEGAL RETAINERSHIP**

***Definition of Legal Retainership:***

A legal retainership is an agreement between a business and a law firm or lawyer, where the business pays a fixed periodic fee known as **Retainer fee** in exchange for ongoing legal services. These services may include contract drafting, regulatory compliance, dispute resolution, and general legal advisory. The arrangement ensures that businesses have ready access to legal expertise without the high costs of hiring an in-house legal team.

***Types of Legal Retainership***

The Rules of Professional Conduct, 2023[[1]](#footnote-1) classified legal retainership into two main categories which includes;

**a. General Retainership**

**b. Special Retainership**

 **General Retainership:** This is an arrangement where a business engages a lawyer to handle all its legal matters on an ongoing basis. This type of agreement provides comprehensive legal support, ensuring that the lawyer is readily available to advise, draft documents, review contracts, and represent the client as needed.

**Special retainership**: This is an arrangement where a business engages a lawyer to handle a specific legal matter on an ongoing basis. The lawyer’s obligation is restricted to the agreed matter, and once it is resolved, the engagement ends unless otherwise renewed or extended. The effect of a special retainership is that the lawyer is restricted from representing adverse parties only in relation to the specific matter covered by the retainership. However, the lawyer is free to represent other clients, including those with interests adverse to the former client in unrelated matters. The only exception is if the new engagement involves the same issues or subject matter for which the lawyer previously acted under the special retainership.

***Key Difference between Retainership and One-Off Legal Services***

1. Nature of Engagement- A retainership involves an ongoing legal relationship where a lawyer provides continuous legal support over a period of time. In contrast, one-off legal services are limited to a specific issue, with no long-term commitment.
2. Scope of Services- Under a retainership, a lawyer may handle multiple legal matters as they arise, depending on the agreement. One-off legal Services, however, are restricted to a single case, transaction or legal need.
3. Payment Structure- In a retainership, the client pays a fixed periodic fee known as retainer fee (monthly, quarterly, or yearly) for access to legal services. With one-off legal services, the client pays per transaction, either as a lump sum or based on an hourly rate.
4. Availability of Lawyer- Clients with a retainership can access their lawyer more readily without needing a new engagement process each time. In one-off legal services, the lawyer is only engaged when required, which may lead to delays in urgent situations.
5. Cost Predictability- A retainership provides predicable legal costs, making budgeting easier. One-off legal services can be unpredictable, as costs may vary depending on the complexity and urgency of the matter.
6. Risk Management- A retainership allows for proactive legal advice, helping businesses prevent legal issues before they arise. One-off legal services are typically reactive, meaning a lawyer is only consulted when a legal problem has already occurred.
7. Client-Lawyer Relationship- Retainership fosters a long-term relationship, allowing the lawyers to understand the client’s business deeply and provide tailored advice. One-Off legal services are more transactional, with limited engagement beyond the specific issue at hand.

**BENEFITS OF LEGAL RETAINERSHIP FOR BUSINESSES**

Legal Retainership is a strategic move for businesses to ensure continuous legal support, proactively manage risks, and maintain compliance with regulatory requirements. This proactive approach offers several advantages that enable businesses to navigate legal complexities, prevent potential issues, and operate smoothly. The key benefits include:

1. **Continuous Legal Support**: A retainership ensures that businesses have a lawyer readily available for legal guidance at any time. This eliminates delays in seeking legal advice and allows for quick decision-making, especially in urgent matters.
2. **Cost-Effective Legal Services**: With a retainership, businesses pay a fixed periodic fee, making legal expenses predictable and manageable. This is often more cost-effective than hiring lawyers on a case by case basis, which can lead to high, unexpected legal costs.
3. **Proactive Risk Management**: Legal retainers help businesses prevent legal issues before they arise. Lawyers provide regular compliance checks, contract review, and risk assessments to ensure that businesses operate within the law, reducing the likelihood of lawsuits, fines or regulatory penalties.
4. **Efficient Contract Drafting and Review**: Businesses frequently deal with contracts involving employees, vendors, partners, and clients. A retained lawyer ensures that contracts are well drafted, legally sound and protect the business from potential disputes or unfavorable terms.
5. **Regulatory Compliance and Corporate Governance**: Companies must comply with various laws, such as tax regulations, labor laws, and industry specific regulations. A retained lawyer helps businesses stay updated on legal requirements, ensuring compliance and preventing legal liabilities.
6. **Faster Dispute resolution**: With a lawyer on retainer, businesses can quickly address disputes before they escalate into costly litigation. Lawyers can negotiate settlements, mediate conflicts, and provide immediate legal intervention when needed.
7. **Intellectual Property Protection**: Businesses that rely on brand identity, patents, trademark, or copyright need continuous legal protection. A retained lawyer helps with registering, enforcing and defending intellectual property rights.

**CHOOSING THE RIGHT RETAINERSHIP FOR OUR BUSINESS**

Selecting the right legal retainership is essential for businesses to ensure they receive the appropriate level of legal support without incurring unnecessary costs. The type of retainership a business needs depends on several factors, including its size, industry, and specific legal requirements.

***Factors to Consider When Choosing a Legal Retainership***

1. **Business Size and Structure**: Small businesses and startups may require a basic retainership covering contract reviews and compliance. While Medium to Large enterprises may need a more comprehensive retainership including dispute resolution, regulatory compliance, and corporate governance.
2. **Industry and Regulatory Requirements**: Certain industries, such as finance, healthcare, real estate et al, have strict legal and regulatory requirements. A business in a highly regulated sector may need a lawyer with specialized expertise. E-commerce or tech startups may require a legal retainership that includes intellectual property protection and data privacy compliance.
3. **Nature of Legal Needs**: If a business frequently deals with employment issues, contracts, or intellectual property, a general retainership may be ideal. If the business requires legal representation for a specific case or transaction, a special retainership may be more suitable.
4. **Budget and Cost Consideration**: Businesses should evaluate their budget and determine whether a fixed fee hourly or contingency based retainership best aligns with their financial capacity. A retainership should be cost effective, providing value for money without unnecessary legal expenses.

***How To Structure A Retainership Agreement That Fits Your Business***

As previously mentioned, a legal retainership agreement basically functions as a contractual arrangement between a business and a law firm or lawyer where a business secures ongoing legal services from a lawyer or law firm for a fixed periodic fee known as Retainer fee. This agreement ensures that businesses have continuous access to legal support or expertise, allowing it to address legal issues proactively rather than reactively. The agreement should include key components to ensure clarity and effectiveness. These components typically include;

1. **Scope of Services:** The agreement should clearly define the legal services covered under the retainership. It should specify whether it includes advisory services, contract drafting, dispute resolution or regulatory compliance.
2. **Duration and termination:** It should establish the duration of the retainership (e.g. six months, one year or ongoing). The agreement should also include termination clause, such as conditions under which either party can end the agreement.
3. **Confidentiality and Conflict of Interest Clause:** Ensure the agreement includes confidentiality terms to protect sensitive business information. It should include a clause that prevents the lawyer from representing competing businesses or adverse parties.
4. **Responsiveness and Availability:** Specify the response times for legal consultations and urgent matters. It must also define how legal support will be provided (e.g in-person meetings, phone calls, emails).
5. **Fee structure:** The agreement must detail payment, including the retainer fee structure, payment structure and any additional costs for services beyond the agreed scope.

 **CONCLUSION**

Legal retainership is a vital tool for businesses seeking to stay ahead of legal risks, ensuring compliance, and operate efficiently. By providing continuous access to legal support, it helps businesses prevent potential legal issues, navigate regulatory complexities and protect their interests in a cost effective manner. Investing in a legal retainership is not just about having legal representation; it is a strategic move that safeguard the long term success and stability of a business. Whether for contract management, dispute resolution, or regulatory compliance, having a dedicated legal advisor ensures that businesses can focus on growth without legal and regulatory environment, securing the right legal retainership is a smart and forward-thinking decision.

1. Rule 49 of the Rules of Professional Conduct, 2023 [↑](#footnote-ref-1)