

# Practice Notes Webinar Series

**Webinar – Part 2: Service Requirements Imposed  
By Clients/Mining Houses That May Expose  
The Consultant To Undue Risk**

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# Webinar – Part 2: Service Requirements That May Expose The Consultant To Undue Risk



## SERVICE REQUIREMENTS IMPOSED BY CLIENTS/MINING HOUSES THAT MAY EXPOSE THE CONSULTANT TO UNDUE RISK

PRACTICE NOTE – PN104 – GBP/ops/9

**Category:** Good Business Practice (GBP)

**Sub-Category:** Practice Operation

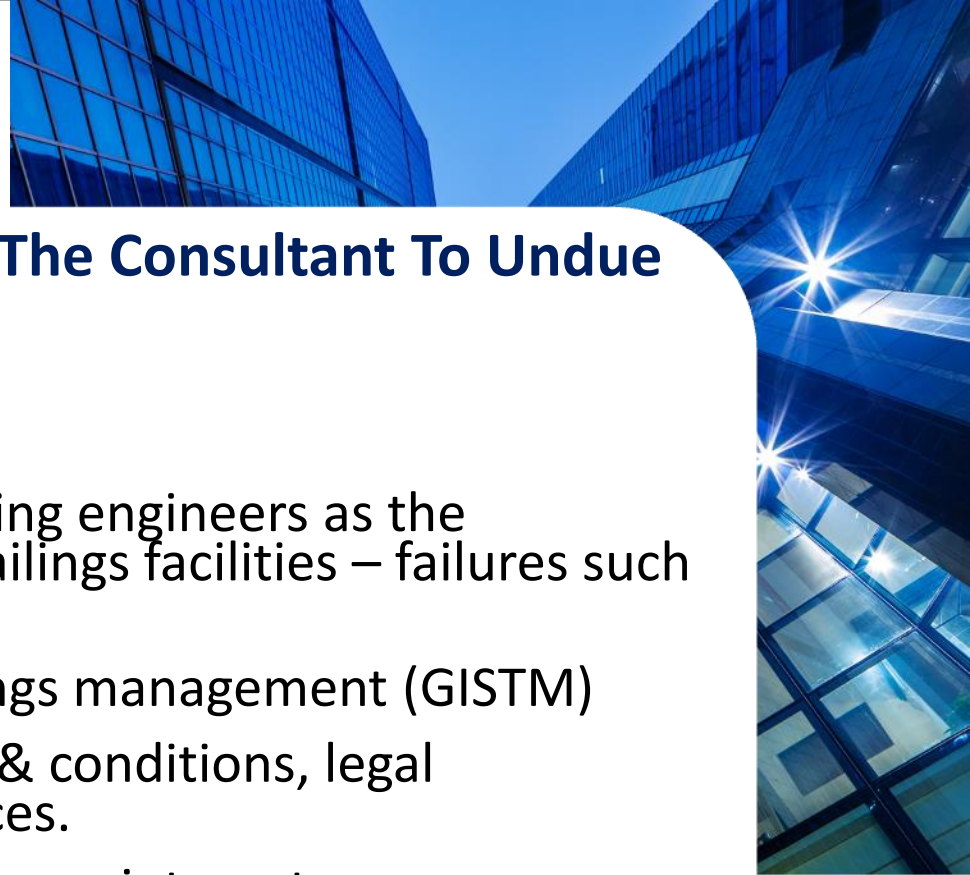
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- (i) **PURPOSE:**  
To provide exposure to members of services that may be requested by clients (specifically mining houses) that expose the consultant to undue risk
- (ii) **KEY WORDS:**  
Consulting services, undue risk, reasonable
- (iii) **DISCLAIMER:**  
The contents hereof are published for general information only and are not

# Webinar – Part 2: Service Requirements That May Expose The Consultant To Undue Risk

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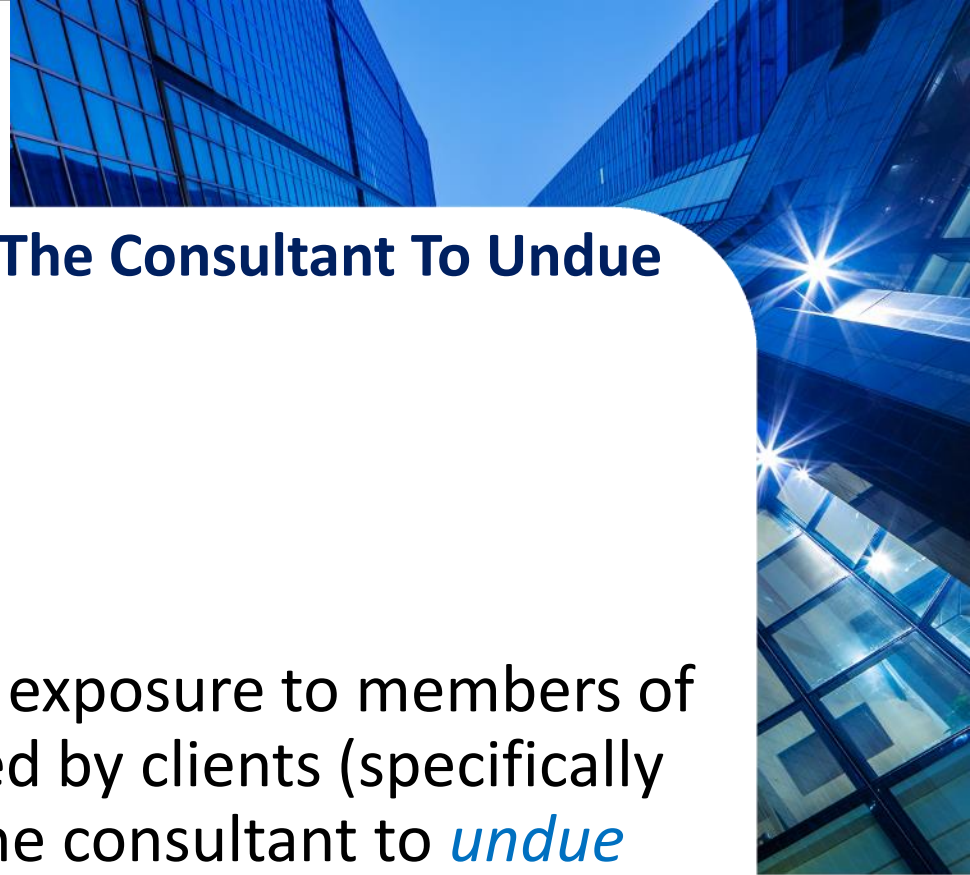


# Webinar – Part 2: Service Requirements That May Expose The Consultant To Undue Risk

## ◆ Introduction

- A recent need to appoint consulting engineers as the “**Engineer on Record**” (EOR) on tailings facilities – failures such as Jagersfontein.
- Global industry standard for tailings management (GISTM)
- Consultant to accept their terms & conditions, legal appointment, and scope of services.
- Generally applicable guidance to appointments



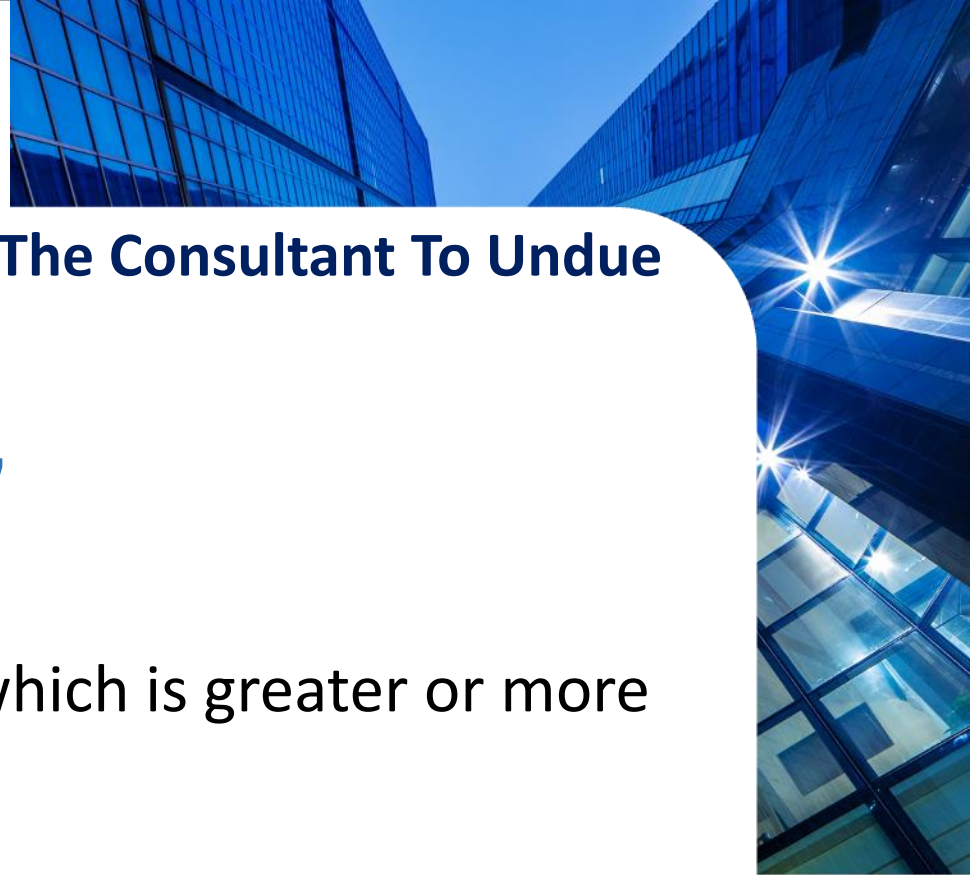


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### ◆ Purpose of practice note

Practice Note 104: To provide exposure to members of services that may be requested by clients (specifically mining houses) that expose the consultant to *undue risk*.





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### ◆ Definition of “Undue Risk”

Undue risk is defined as risk which is greater or more extreme than is *reasonable*.





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## ◆ Importance of contractual agreement

It is important to remember that appointment for consulting services must be backed by a contractual agreement and purchase order (including limit of liability clauses) – not only a **legal appointment letter**.

The Client may want to appoint a **specific person** as the EOR. This places significant risk on the individual. It is advised that the **consulting company** be appointed as the EOR.

If necessary, the consulting company can **nominate** a specific engineer to act in the role as EOR.





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### ◆ Importance of qualifying area of involvement

The client may want to add as part of the consulting services, the responsibility to ensure that all operations on site under the appointment of the EOR meet the Occupational Health and Safety Act (OHSA) requirements.

This would be difficult for the EOR to achieve if his appointment is not full time on site. It is important to qualify that these would apply in the EOR's area of responsibility and only covering operations where he/she is actively involved, during the contract period.







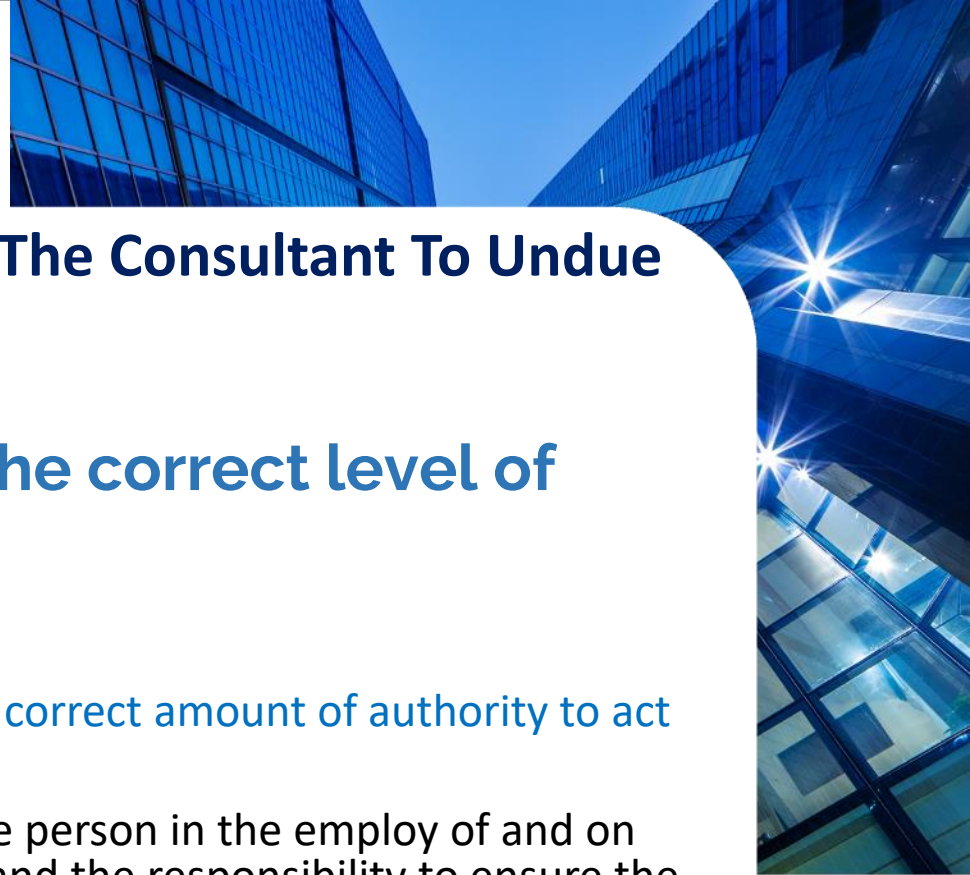
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### ◆ Importance of detailing the scope of works accurately

The client may want to keep the scope of services and area of responsibility vague. It is important to **detail the scope of works as accurately as possible**.

If there is only one facility that the EOR is responsible for, this must be stated as such and battery limits must be detailed.





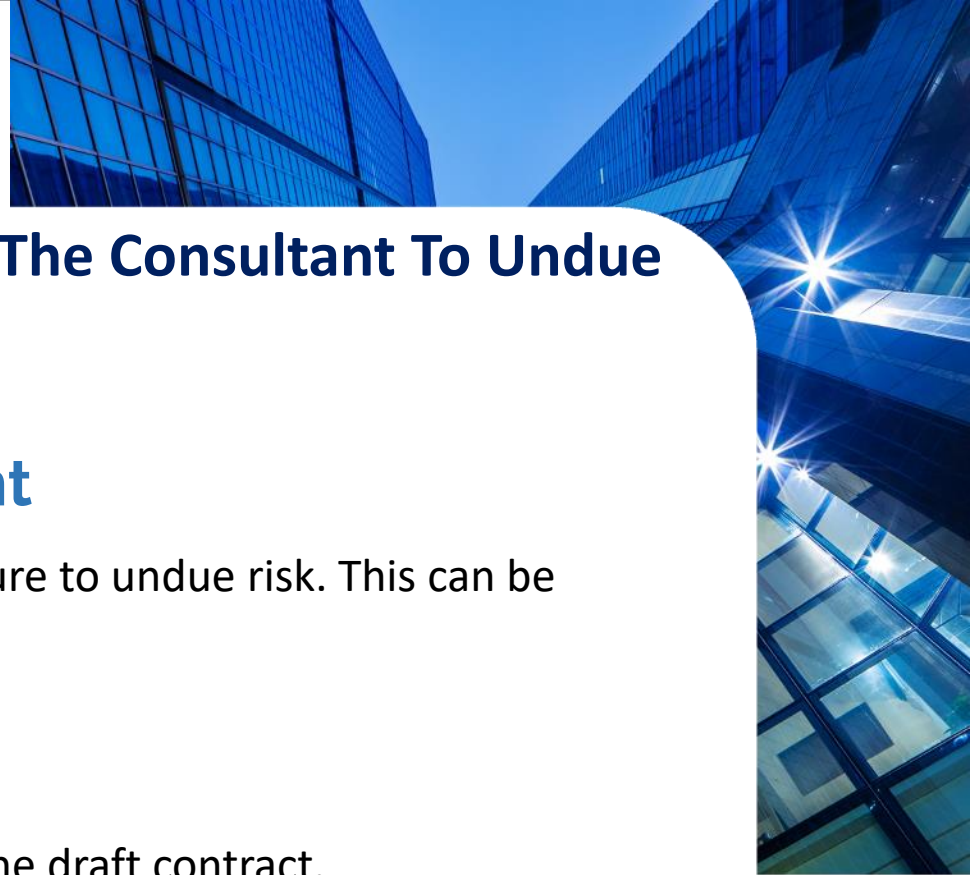
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### ◆ Importance of providing the correct level of authority

It is important to provide the EOR with **the correct amount of authority to act** as required by the scope of services.

An alternative to this would be to detail the person in the employ of and on behalf of the client who has the authority and the responsibility to ensure the recommendations of the EOR are carried out.





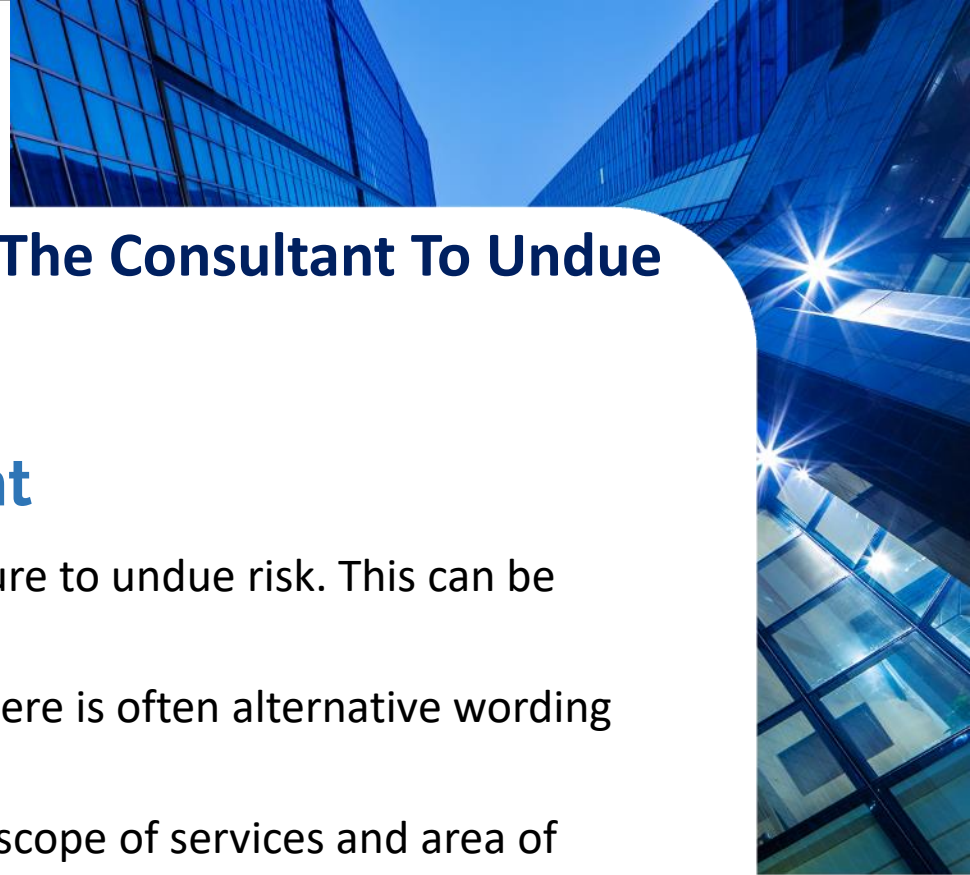
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## ◆ Negotiating with the client

Take an active role in reducing your exposure to undue risk. This can be achieved by doing following:

- a) Read the draft contract thoroughly.
- b) Highlight areas of concern.
- c) If possible, have your PI insurer review the draft contract.





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## ◆ Negotiating with the client

Take an active role in reducing your exposure to undue risk. This can be achieved by doing following:

- d) Discuss your concerns with the client, there is often alternative wording that is suitable to both parties.
- e) Ask the client to be more specific in the scope of services and area of responsibility.



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## ◆ Conclusions

- The Consultant must take an active role in managing risk.
- Only be responsible for areas that are under your appointment.
- It is always necessary to ensure there is a contract backing the appointment with agreed t&c' as well as a defined scope and period.

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Excellence’**