

**1959/38**

*Reprint under section 7 of the Regulations Act 1936 of the Solicitors Audit Regulations 1938 (S.R. 1938/37), as amended by the following amendments:*

Amendment No. 1, S.R. 1941/195  
 Amendment No. 2, S.R. 1943/25  
 Amendment No. 3, S.R. 1951/260  
 Amendment No. 4, S.R. 1958/186

## THE SOLICITORS AUDIT REGULATIONS 1938 (REPRINT)

GALWAY, Governor-General

### ORDER IN COUNCIL

At the Government Buildings at Wellington this 9th day of  
 March 1938

Present:

THE RIGHT HON. M. J. SAVAGE PRESIDING IN COUNCIL

PURSUANT to the Law Practitioners Act 1931, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

The Law Practitioners Act 1931 was repealed and replaced by the Law Practitioners Act 1955.

## REGULATIONS

### REGULATION 1—PRELIMINARY

- (1) These regulations may be cited as the Solicitors Audit Regulations 1938.
- (2) These regulations shall come into force on the 1st day of April 1938.
- (3) In these regulations, where not inconsistent with the context,—
  - “Approved accountant” means an accountant for the time being approved for the audit of trust accounts pursuant to regulation 2 hereof:
  - “Auditor” means an approved accountant for the time being engaged by any solicitor to audit his trust accounts:
  - “District Law Society” means in respect of any place of practice of a solicitor the District Law Society of the district in which such place of practice is situate, and if he practises in more than one district, the District Law Society of each such district respectively:

“Month” means calendar month:

“Solicitor” means a solicitor of the Supreme Court of New Zealand, and includes a firm of solicitors and every member of a firm of solicitors:

“Trust account” means an account of trust account moneys:

“Trust account moneys” means all moneys which are when received by a solicitor subject to the provisions of [section 71 of the Law Practitioners Act 1955]:

“Year” means a year ending on the 31st day of March.

(4) Subject to the next succeeding clause hereof, the Solicitors Audit Regulations 1931\* are revoked as from the date of the coming into force of these regulations.

(5) Nevertheless the Solicitors Audit Regulations 1931 shall continue to apply to the audit of any trust account for the year ending on the 31st day of March 1938 and to all matters arising out of such audit or any failure to make or complete such audit as fully as if they had not been revoked.

(6) All notifications of the engagement of an auditor, notices relating to the practice of a solicitor, approvals of auditors, forms of receipt, statements of moneys, securities, and documents, reports of auditors, and generally all documents, matters, acts, and things which originated or had effect under the regulations hereby revoked and are of continuing effect at the time of the coming into force of these regulations shall enure for the purposes of these regulations as if they had originated under these regulations, and shall, where necessary, be deemed to have so originated.

(7) Any consent, approval, or other decision or determination of the Council of a Law Society under these regulations shall be given by resolution duly passed at a meeting of the Council, and may be evidenced by writing under the hand of the Secretary of such Law Society stated to be in pursuance of a resolution of such Council.

In clause (3), in the definition of the term “trust account moneys”, s. 71 of the Law Practitioners Act 1955, being the corresponding enactment in force at the date of this reprint, has been substituted for s. 46 of the repealed Law Practitioners Act 1931.

## REGULATION 2—QUALIFICATIONS OF AUDITOR

(1) Subject to the succeeding provisions of this regulation, every member of the New Zealand Society of Accountants classified as a public accountant and approved by the Council of a District Law Society [as the auditor of the trust accounts of any particular solicitor shall be competent to make audits of the trust accounts of that solicitor so far as the solicitor practises within the district of that society].

(2) Subject to the succeeding provisions of this regulation, any competent accountant nominated by a solicitor and approved by the Council of a District Law Society for that purpose, such Council being satisfied that no approved public accountant is reasonably available, shall be competent to make audits of trust accounts of that particular solicitor so far as such solicitor practises within the district of that society.

(3) Any approval of an accountant under clause (1) or clause (2) of this regulation may at any time be withdrawn by the Council of a District Law Society by notice in writing given to such accountant.

(4) Notice of the withdrawal of approval of an accountant shall be given by the District Law Society to every solicitor of whose trust accounts such accountant appears, according to the records of the District Law Society, for the time being to be the auditor; but failure to give the notice referred to in this clause shall not affect the validity of any withdrawal of approval.

(5) If an accountant nominated by a solicitor as his auditor is so closely related by blood or marriage to the solicitor as in the opinion of the Council of the District Law Society to render his engagement or the continuation of his engagement as auditor of that solicitor undesirable, the Council may notify the solicitor to that effect, and thereupon such accountant shall no longer be deemed qualified to audit any trust account of that solicitor.

(6) Notwithstanding anything herein contained, no auditor shall be deemed qualified to audit any trust account of a solicitor if he is or at any time within one year of his engagement by the solicitor has been a clerk, servant, or partner of such solicitor, or if he is a clerk or servant of any other practising solicitor, or if he is himself a practising solicitor, or if he or a member of his firm or staff is or at any time within the said period has been engaged or concerned in keeping the books of such solicitor [otherwise than in the completion of the closing entries at the end of a financial year or other period, or the preparation of the profit and loss account, balance sheet, or returns for taxation].

In clause (1) the words in square brackets were substituted for the words "shall be competent to make audits of the trust accounts of any solicitor so far as such solicitor practises within the district of that society" by regulation 4 of S.R. 1943/25.

In clause (6) the words in square brackets were added by regulation 5 of S.R. 1943/25.

### REGULATION 3—NOTIFICATIONS RELATING TO PRACTICE

(1) Every notice required by this regulation shall be a notice in writing signed by the solicitor and given to the Secretary of the District Law Society and the Secretary of the New Zealand Law Society within two weeks after the occurrence of the matter in respect of which the notice is required to be given:

Provided that notice given and signed by a partnership firm or signed on behalf of the firm by any member thereof shall be deemed a sufficient notice by all the members of that firm.

(2) Every solicitor who at any place in any district, whether by himself or in partnership, and whether or not he has theretofore been or remains in practice in any other place in the same or any other district, (a) commences practice, or (b) recommences practice, or (c) opens a branch of his practice, shall give notice thereof as provided in clause (1) of this regulation:

Provided that such notice shall not be required in the case of the removal of a practice or branch of a practice from any premises to other premises within the same borough or town district.

(3) Every solicitor who amalgamates his practice or a branch of his practice with the practice or a branch of the practice of any other solicitor shall give notice thereof as provided in clause (1) of this regulation.

(4) Every solicitor in partnership shall on the dissolution of such partnership or on the death or retirement of any partner or on the assumption of a new partner give notice thereof as provided in clause (1) of this regulation.

(5) Every solicitor who ceases to carry on his practice or a branch of his practice (whether or not he continues to carry on any other branch thereof) shall give notice thereof as provided in clause (1) of this regulation.

#### REGULATION 4—APPOINTMENT AND NOTIFICATION OF AUDITORS

(1) Every notice required by this regulation shall be a notice in writing signed by the solicitor and given to the Secretary of the District Law Society and the Secretary of the New Zealand Law Society within two weeks after the occurrence of the occasion in respect of which the notice is required to be given, and shall be included in the same document as the notice required on the like occasion to be given pursuant to regulation 3 hereof, and shall set out the name of an approved accountant engaged by him to be the auditor of his trust accounts or (as the case may require) of the trust account specified in the notice or of his trust accounts kept or to be kept at the branch of his practice specified in the notice:

Provided that notice given and signed by a partnership firm or signed on behalf of the firm by any member thereof shall be deemed a sufficient notice by all the members of that firm.

(2) Every solicitor who at any place in any district, whether by himself or in partnership, and whether or not he has theretofore been or remains in practice in any other place in the same or any other district, (a) commences practice, or (b) recommences practice, or (c) opens a branch of his practice, shall give notice as provided in clause (1) of this regulation:

Provided that such notice shall not be required in the case of the removal of a practice or branch of a practice from any premises to other premises within the same borough or town district.

(3) Every solicitor who amalgamates his practice or a branch of his practice with the practice or a branch of the practice of any other solicitor shall give notice as provided in clause (1) of this regulation.

(4) Every solicitor in partnership who on the dissolution of such partnership continues to practice shall give notice as provided in clause (1) of this regulation.

(5) Any auditor who for any reason ceases to be engaged or qualified to audit any trust account of a solicitor shall within two weeks thereafter notify the fact to the Secretary of the District Law Society.

(6) When an auditor dies or retires from business, or if notice is received by a solicitor that the auditor is no longer approved or qualified under these regulations to audit the trust accounts of that solicitor, or if the engagement of such auditor has in any way been lawfully terminated, the solicitor shall within two weeks thereafter give in respect of some other approved accountant notice as provided in clause (1) of this regulation.

(7) Notwithstanding anything herein contained, no solicitor shall cease to employ or terminate the engagement of an auditor notified under this regulation with a view to engaging another auditor save with the consent of the Council of the District Law Society first had and obtained.

(8) Upon receipt of any regular notification of the engagement of an auditor the Secretary of the District Law Society shall, unless he is already in possession of written evidence of the auditor's acceptance of the engagement, apply in writing to such auditor for confirmation by him of his acceptance of the engagement.

#### REGULATION 5—REQUIREMENT OF AUDIT

(1) It shall be the duty of every solicitor to procure his trust accounts to be audited by an auditor in manner prescribed by this regulation.

(2) It shall be the duty of every auditor engaged to audit any trust account of a solicitor to conduct such audit in manner prescribed by this regulation.

(3) Except in the case of a solicitor not in practice on the 1st day of April in any year, the auditor of any trust account shall examine the account on at least three occasions.

(4) (a) The first of such examinations shall be made between the 1st day of July and the 31st day of August (both days included).

[(b) The second examination shall be made between the 1st day of December and the last day of February (both days included).]

(c) The third examination shall complete the audit for the year, and shall be made between the 1st day of April and the 30th day of June (both days included).

(5) The auditor of any trust account of a solicitor not in practice on the 1st day of April in any year shall in respect of that year examine the account on such occasions not exceeding three as may be required by the Council of the District Law Society.

[(6) Upon every examination made under clauses (4) and (5) of this regulation the auditor shall satisfy himself that all trust account moneys have been duly carried into the solicitor's trust accounts and that all moneys received into such trust accounts are properly accounted for, and shall require the production of—

(a) All securities and documents of title held by the solicitor in his own name for or in trust for any other person:

(b) All negotiable securities as described in clause (8) of regulation 6 hereof held by the solicitor for or in trust for any other person:

(c) The Register of Negotiable Securities referred to in clause (8) of regulation 6 hereof.]

(7) The auditor may make other or further examinations at any time either by arrangement with the solicitor or of his own motion.

(8) The auditor shall after any examination promptly report to the Secretary of the District Law Society any matter or thing in relation to the trust account which should, in his opinion, be communicated to the Council of such society.

(9) Forthwith after conducting the examination that completes the audit for the year, the auditor shall send with a covering letter signed by himself a report in accordance with the next succeeding clause of this

regulation to the Secretary of the District Law Society verified by the statutory declaration of the auditor in the form set out in the Schedule hereto, and shall at the same time deliver a signed copy of his report to the solicitor to whose accounts it relates.

(10) Every report furnished pursuant to the last preceding clause hereof shall include a statement as to the following matters:

- (a) Whether the trust account of such solicitor has, in the opinion of the auditor, been kept regularly and properly written up:
- (b) Whether the solicitor has forwarded each month to the auditor a certified list of the balances of his trust account for the previous month, as provided by these regulations:
- (c) Whether the trust account of such solicitor has been ready for examination at the appointed periods:
- (d) Whether the solicitor has complied with the auditor's requirements:
- (e) Whether such solicitor's trust account is, in the opinion of the auditor, in order or otherwise:
- (f) Whether the solicitor has produced all unused receipt forms:
- (g) Any matter or thing in relation to such trust account which should, in the opinion of the auditor, be communicated to the Council of the District Law Society.

(11) The report of an auditor in respect of any year shall be available in the hands of the Secretary of the District Law Society for inspection by the auditor appointed to audit the trust accounts of the same solicitor for the next succeeding year.

[(12) Upon making any examination of a trust account under clauses (4) and (5) of this regulation the auditor shall—

- (a) Certify under his hand and return to the solicitor the statement delivered to him by the solicitor pursuant to clause (3) of regulation 6 hereof:
- (b) Certify under his hand in the Register of Negotiable Securities referred to in clause (8) of regulation 6 hereof that he has examined such of the securities listed in that Register as have not prior to the time of his examination passed out of the solicitor's possession and control.]

(13) Within one month after any solicitor ceases to carry on his practice or a branch of his practice or within one month of the dissolution of any partnership it shall be the duty of such solicitor or, as the case may be, the executors or administrators of a deceased solicitor or of each member of the dissolved firm to cause the trust accounts kept in connection with the practice (or, as the case may be, the said branch of the practice) to be finally audited and reported upon pursuant to this regulation as if the date of ceasing to carry on the practice or branch of a practice or the date of dissolution were the 31st day of March.

(14) A solicitor in actual practice who has not handled any trust account moneys during any year shall within one month after the end of that year forward to the Secretary of the District Law Society his statutory declaration stating that fact.

Para. (b) of clause (4) was substituted for the original para. (b) by regulation 6 (a) of S.R. 1943/25.

Clause (6) was substituted for the original clause (6) by regulation 6 (b) of S.R. 1943/25.

Clause (12) was substituted for the original clause (12) by regulation 6 (c) of S.R. 1943/25.

## REGULATION 6—SPECIAL DUTIES OF SOLICITORS

(1) It shall be the duty of every solicitor to keep his trust account books in such a manner as to disclose to the auditor the position of the funds therein and to enable the same to be conveniently and properly audited.

(2) For the purpose of every audit and report every solicitor shall, as and when required by the auditor, produce to the auditor all books, papers, accounts, statements, bills of costs or copies thereof, documents, receipts, and securities required by the auditor to verify payments made during the year from the trust accounts the subject of the audit or in any way relating to such trust accounts, and shall give to the auditor such information as he may reasonably require.

[(3) Every solicitor shall, on notification to him by the auditor of the last day of any period to which any examination proposed or entered upon by the auditor relates, prepare, certify, and sign a statement setting forth in detail the following particulars, namely:

- (a) All moneys held on that day by the solicitor in his own name for or in trust for any other person:
- (b) The names of the banking accounts in which such moneys have been lodged, with the balances on that day of such banking accounts, and, in cases where the bank balances are not in agreement with the cashbook balances of the solicitor, a statement reconciling such balances:
- (c) All securities and documents of title held on that day by the solicitor in his own name for or in trust for any other person.
- (3A) Every solicitor shall on demand produce to the auditor making any examination of his trust accounts—
  - (a) The signed copy of the report of the last preceding audit relating to such trust accounts:
  - (b) The statement prepared pursuant to clause (3) of this regulation and relating to the last day of the period of such examination:
  - (c) The last preceding statement prepared pursuant to clause (3) of this regulation:
  - (d) The Register of Negotiable Securities referred to in clause (8) of this regulation.]

(4) In the case of the first audit of any solicitor's trust account, and in every other case in which no such certified statement as aforesaid is available for purposes of audit, the solicitor shall in lieu thereof make out and deliver to the auditor before the making of his report a statement containing the like particulars as to moneys, securities, and documents held on the first day of the year to which the audit relates. Such statement shall be verified by the statutory declaration of the solicitor or in the case of a firm of solicitors by the statutory declaration of the partners having knowledge of the respective matters.

(5) Every solicitor, or, in the case of a firm, one or more members of such firm, shall supply to the auditor at the time of the final examination for each year a list (certified by such solicitor, or, in the case of a firm, by one of the members of such firm having knowledge of the facts) of the trust banking accounts operated on solely by the solicitor or his firm or any member of such firm, together with any passbooks or bank statements relating to such accounts, and shall also supply to such auditor within seven days after the opening of the same particulars certified as aforesaid of any new trust banking account opened by the solicitor or his firm at any time during the year:

【Provided that in this clause the term “banking accounts” shall include any account in the Post Office Savings Bank or any [trustee savings bank established under the Trustee Savings Banks Act 1948.】

【(6) 【In each month, not later than the tenth day on which the offices of solicitors in the district of the District Law Society are normally open for business during that month,】 every solicitor shall forward to the auditor 【and to the Secretary of the New Zealand Law Society】 a list certified by the solicitor, or, in the case of a firm, by one of the members of such firm, of the balances appearing in the trust accounts of every client and of the amount of moneys (if any) of himself or his firm in each trust banking account of himself or his firm respectively as at the end of the last preceding month, and shall also supply a copy of the reconciliation statement referred to in clause (7) of this regulation.

(6A) The balance appearing in the trust account of any client shall not for the purposes of the list referred to in clause (6) of this regulation or for any purpose of audit be deemed to be reduced by any sum applied for or towards payment of the costs of the solicitor or credited to the solicitor as undrawn costs (except sums representing commission properly chargeable on the collection of moneys) unless—

- (a) A bill of costs has been rendered in respect thereof dated as on the date rendered, and a copy of such bill is produced if requested for the inspection of the auditor; or
- (b) An authority in writing in that behalf signed by the client specifying the sum to be so applied and the particular purpose to which it is to be applied and dated not later than the date of application or credit in the solicitor’s books of account of the money to which it relates is produced for the inspection of the auditor.】

(7) Every solicitor shall at the end of every month cause the balance of his trust banking accounts to be agreed with the balance of his cashbook relating thereto and with the total of the lists referred to in the last preceding clause hereof, and shall keep in the cashbook or other appropriate book reconciliation statements showing such agreement:

Provided that nothing herein contained shall require a solicitor to insert closing entries in a trust account ledger for balance purposes except on the 31st day of March.

【(8) While this clause continues in force, in the case of a solicitor who for the time being is serving continuously as a member of any of His Majesty’s naval, military, or air forces, it shall be a sufficient compliance on the part of such solicitor with any requirement imposed on him by this regulation if such requirement is complied with by some practising solicitor who has been appointed by the first-named solicitor as his attorney or otherwise to undertake the supervision of his professional practice:

Provided that any practising solicitor who assumes responsibility under this clause for the requirements imposed on a solicitor serving as aforesaid shall, until he satisfies the District Law Society that he has been discharged from such responsibility by the serving solicitor or by some other practising solicitor authorised to act by the serving solicitor in the premises, be liable in respect of the trust account

of the serving solicitor to comply with the requirements of this regulation, and shall be answerable for non-compliance therewith to the same extent as in respect of his own trust account.】

【(9) Every solicitor shall keep a register, to be known as the Register of Negotiable Securities, in which shall be entered in respect of all bearer debentures, deposit receipts, and other negotiable securities (hereinafter collectively referred to as “negotiable securities” or “securities”) held by the solicitor for or in trust for any other person (exclusive of such negotiable instruments as are received for immediate collection and conversion into money and are the subject of a trust account receipt and are entered on receipt thereof in a trust account cashbook) the following particulars, namely:

- (a) Date of receipt of security by the solicitor:
- (b) Description of security, including principal sum purporting to be secured:
- (c) Name of person on whose behalf the security is held:
- (d) Name of person, if any, in whose favour the security is expressed to be made:
- (e) Date when security is delivered out of the solicitor’s possession and control:
- (f) Short narration of disposal of security on leaving the solicitor’s possession and control.

(10) The entries referred to in items (a) to (d) of the last preceding clause shall be made forthwith upon the receipt by the solicitor of any negotiable security, and the entries referred to in items (e) and (f) of the last preceding clause shall be made forthwith upon the delivery of any negotiable security out of the solicitor’s possession and control.

(11) Every solicitor shall retain every volume of his Register of Negotiable Securities for at least two years after the date of the last entry made therein.】

Clauses (3) and (3A) were substituted for the original clause (3) by regulation 7 (a) of S.R. 1943/25.

The proviso to clause (5) was added by regulation 7 (b) of S.R. 1943/25; and in that proviso the reference to a trustee savings bank established under the Trustee Savings Banks Act 1948 was substituted for a reference to a savings bank established under the Savings Banks Act 1908 by s. 39 (5) of the Trustee Savings Banks Act 1948.

Clauses (6) and (6A) were substituted for the original clause (6) by regulation 7 (c) of S.R. 1943/25.

In clause (6) the words in the first set of double square brackets were substituted for the words “within the first fourteen days of each month except January and within the first twenty-one days of January” by regulation 2 of S.R. 1951/260, and the words in the second set of square brackets were inserted by regulation 2 of S.R. 1958/186.

Clause (8) was added by regulation 3 of S.R. 1941/195, Clauses (9), (10), and (11) were added by regulation 7 (d) of S.R. 1943/25.

#### REGULATION 7—SPECIAL RECEIPT FORMS

(1) No solicitor shall give a receipt for trust account moneys except on a form supplied to the solicitor by the New Zealand Law Society or some person authorised by it on that behalf.

(2) Such forms shall be supplied in bound books of not less than 120 forms arranged so that a carbon duplicate of each receipt issued may be retained in the book.

(3) Such forms shall before being supplied as aforesaid be numbered and/or lettered consecutively so that each form and each book of forms may be identified and so that the form of receipt and duplicate shall have the same identification mark.

(4) The New Zealand Law Society or the person authorised by it to supply forms of receipt shall keep a record of the identification marks of all forms supplied to any solicitor or firm of solicitors, and shall promptly notify to each auditor the particulars of every book of forms supplied to a solicitor or firm of solicitors whose trust account he has been engaged to audit.

(5) For the purposes of this regulation the Secretary of each District Law Society shall promptly notify to the New Zealand Law Society the name and address of every approved accountant engaged to audit a trust account of any solicitor and the name and address of every solicitor or firm of solicitors by whom such accountant has been so engaged.

(6) The New Zealand Law Society shall keep a properly indexed record of the particulars supplied pursuant to the last preceding clause hereof.

(7) Subject to the next succeeding clause hereof, every solicitor shall for each sum received for or on behalf of any person forthwith give to the person paying the same a receipt in one of the forms supplied to him as aforesaid specifying briefly the subject-matter or purpose in respect of which such sum is received, and shall make a legible carbon duplicate of such receipt and retain such duplicate in the book of forms into which it is bound.

(8) A solicitor shall not be bound to comply with the requirements of the last preceding clause of this regulation when the following payments are received:

- (a) Bearer bond interest or inscribed stock interest or company dividends lodged by the Government, local authority, or company direct to the credit of the trust banking account of the solicitor:
- (b) Collections of interest, dividends, and the like made by a bank on behalf of the solicitor and credited by the bank direct to the trust banking account of the solicitor:
- (c) Interest payments on Government inscribed stock where a special form of receipt is required to be endorsed on the dividend warrant itself:
- (d) Moneys received from any Government Department that requires a receipt to be given on its own form of receipt:
- (e) Moneys drawn from any savings bank (including the Post Office Savings Bank and any [trustee savings bank established under the Trustee Savings Banks Act 1948]).

(9) Immediately on receipt at the office of a solicitor of a payment of any of the classes set out in paragraphs (c), (d), and (e) of the last preceding clause hereof the solicitor shall cause to be made out on one of the forms supplied to him as aforesaid a receipt showing sufficiently the source and subject-matter or purpose as aforesaid, and shall retain the same with the carbon duplicate in the book of forms.

(10) Whenever at any examination of a trust account the auditor so requires, the solicitor shall produce to the auditor all books of receipts used and unused supplied to the solicitor under this regulation, including the retained duplicates of receipts issued by the solicitor and including receipts and duplicates prepared pursuant to the last preceding clause hereof:

Provided that nothing in this clause shall require the retention by a solicitor of used books of receipts none of which relates to accounts of the year for which the audit is being conducted or the last preceding year.

(11) Upon completion of the audit of the trust accounts of any solicitor who ceases practice, such solicitor shall forthwith deliver to the Secretary of the District Law Society any unused trust account receipt forms in his possession, to be disposed of as the District Law Society shall think fit.

(12) Upon the death of any solicitor practising by himself and not in partnership, his auditor shall as soon as possible take charge of the unused trust account receipt forms, and upon completion of the audit of the trust accounts of such deceased solicitor the auditor shall deal with such forms as the District Law Society may direct.

In clause (8) (e) the reference to a trustee savings bank established under the Trustee Savings Banks Act 1948 was substituted for a reference to a savings bank established under the Savings Banks Act 1908 by s. 39 (5) of the Trustee Savings Banks Act 1948.

#### REGULATION 8—SOLICITOR-TRUSTEES

(1) This regulation applies to accounts of moneys received and held in trust by a solicitor, whether practising by himself or in partnership, who is himself a trustee of such moneys for other persons whether *sui juris* or under disability so far as such moneys as are not paid into a trust account of the solicitor or his firm which is audited under the general provisions of these regulations.

(2) If the solicitor is sole trustee, or if two or more solicitors partners of the same firm [or a solicitor and any one or more persons in his employ, or one or more solicitors partners of the same firm, and any one or more persons in the employ of the firm or of a member thereof] are joint trustees and the only trustees, and if in respect of the trust a separate bank trust account and separate books of account are kept, such account shall be deemed to be a separate trust account within the meaning of [the Law Practitioners Act 1955] and these regulations, and shall be audited accordingly.

(3) If the solicitor is a trustee jointly with any person who is not his partner [or in his employ] or with any other persons any of whom is not his partner [or in the employ of the partnership or of any member thereof] and such solicitor does not either by himself or his servants actually receive the moneys of the trust and has not authority by himself to operate upon any banking account of the trust, then such trust account shall not be subject to the provisions of these regulations.

[(3A) Where a solicitor actually receives any moneys of a trust either by himself or his servants, a receipt shall be issued in accordance with clause (7) of regulation 7 hereof.]

(4) In all other cases the auditor of the solicitor shall either audit the accounts of such trust or satisfy himself by the certificate of an accountant that the accounts of the trust are duly audited.

In clause (2) the words in the first set of square brackets were inserted by regulation 8 (a) of S.R. 1943/25; and the Law Practitioners Act 1955, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Law Practitioners Act 1931.

In clause (3) the words in the first set of square brackets were inserted by regulation 8 (b) of S.R. 1943/25, and those in the second set of square brackets were inserted by regulation 8 (c) of S.R. 1943/25.

Clause (3A) was inserted by regulation 3 of S.R. 1951/260.

#### REGULATION 9—DEFAULTS AND IRREGULARITIES

(1) If within seven days after the last day on which any audit should be completed pursuant to clause (4), clause (5), or clause (13) of regulation 5 hereof the Secretary of the District Law Society has not received the report prescribed by clause (9) of regulation 5 hereof, he shall forthwith report the fact to the President of the District Law Society.

(2) The President of the District Law Society shall cause the matter to be considered by the Council thereof at a meeting held within one month thereafter, and the Council shall thereupon forward a report on the matter to the New Zealand Law Society, stating what action, if any, has been taken in regard thereto.

(3) If an auditor considers that any trust account of a solicitor is not kept in such a manner as to enable it to be properly audited, or discovers any matter which appears to him to involve dishonesty or any breach of law on the part of the solicitor whose accounts he is auditing, or discovers any loss or deficiency of trust account moneys or any failure by the solicitor to pay or account for such moneys or to comply with the provisions of these regulations, he shall fully set out the matter in [a report to be delivered forthwith to the Secretary of the District Law Society, and shall at the same time] send a copy of the report to the Secretary of the New Zealand Law Society.

(4) The Secretary of the District Law Society shall forthwith lay before the President of the District Law Society any report setting out any such irregularities as are described in the last preceding clause hereof, and the President shall cause the matter to be considered by the Council of the District Law Society at a meeting held within one month thereafter, and the Council may investigate the matter and, if necessary, institute proceedings against the solicitor concerned.

(5) For the purposes of any investigation under this regulation the Council of the District Law Society shall have power to call before it and examine the auditor who made the report and the solicitor or any member of the firm of solicitors whose accounts are being investigated, or any member of the staff of such solicitor or firm of solicitors, either together or separately, and to examine all books, papers, accounts, documents, and securities held by the solicitor concerned relating to the matter reported on, and it shall be the duty of such solicitor or person, if required, to produce to such Council all such books, papers, accounts, documents, and securities, and to give such information as may be reasonably required.

In clause (3) the words in square brackets were substituted for the words "the report to be delivered to the Secretary of the District Law Society pursuant to clause (9) of regulation 5 hereof, and shall in that case" by regulation 4 of S.R. 1951/260.

#### REGULATION 10—DISCLOSURE OF INFORMATION

(1) Save in any report to the Secretary of the District Law Society or the Secretary of the New Zealand Law Society or on being examined in any investigation conducted by the Council of the District Law Society or in or for the purpose of any proceedings which may arise out of such report or otherwise in relation to the trust accounts of the solicitor concerned or with the previous consent of the Council of the District Law Society or the Council of the New Zealand Law Society, no auditor shall disclose to any person any information which he has obtained in the course of his audit.

(2) Every auditor who commits a breach of the last preceding clause hereof shall be liable to a fine not exceeding £100, and shall, in addition, be subject to the like liability in damages to any client of that solicitor damaged by the disclosure of such information as the solicitor would be if the solicitor had disclosed such information.

(3) With the consent of the Council of the District Law Society or the Council of the New Zealand Law Society, the Secretary of such respective society may furnish to any person any information contained in reports of auditors in the hands of such society in so far as it relates to moneys or securities in which such person is interested, and may furnish to the New Zealand Society of Accountants any information which that society may require for the purpose of disciplining its members.

(4) It shall be the duty of every bank as defined in [section 2 of the Law Practitioners Act 1955], and of the manager for the time being of every branch of such bank, on the request of any auditor engaged in the audit of a solicitor's trust account under these regulations, and without reference to such solicitor, to supply to that auditor a list of the accounts operated on by such solicitor and all such information as to the bank account or accounts of that solicitor or of any account on which such solicitor operates as may reasonably be required for the purposes of such audit.

[(5) Every auditor shall at all times during the existence of his engagement to audit a trust account of any solicitor be the agent of that solicitor to obtain from the bank at which the banking account of the moneys belonging to that trust account is kept all cheques drawn upon such banking account and to give to the bank sufficient receipts and acknowledgments for cheques so obtained, and a certificate under the hand of the Secretary of the District Law Society shall be sufficient evidence to a bank and the manager thereof of the existence and continuance of any such engagement as aforesaid.]

In clause (4), s. 2 of the Law Practitioners Act 1955, being the corresponding enactment in force at the date of this reprint, has been substituted for s. 21 of the repealed Law Practitioners Amendment Act 1935.

Clause (5) was added by regulation 9 of S.R. 1943/25.

## REGULATION 11—AUDITORS' FEES

(1) The fees payable by a solicitor to an auditor in respect of his audit and report shall be such as are agreed upon between the solicitor and the auditor.

(2) Subject to any written agreement to the contrary between a solicitor and any person for or in trust for whom any moneys are received or held by the solicitor, the cost of auditing his trust account shall be borne by the solicitor.

## REGULATION 12—PENALTIES

(1) Every solicitor, auditor, banker, or other person who commits any breach of these regulations for which no penalty is otherwise provided shall be liable to a fine not exceeding £100.

(2) If two or more solicitors or other persons in partnership commit any breach of these regulations for which no penalty is otherwise provided, each of those persons shall be severally liable to a fine not exceeding £100.

## SCHEDULE

I, \_\_\_\_\_, of \_\_\_\_\_, Accountant, do solemnly and sincerely declare:

1. That I am a member of the New Zealand Society of Accountants incorporated under [the New Zealand Society of Accountants Act 1958].

2. That in accordance with [section 75 of the Law Practitioners Act 1955], and the regulations made thereunder, I have, with the assistance of my employees, audited the trust account of \_\_\_\_\_, solicitor [or solicitors] of the Supreme Court, practising at \_\_\_\_\_, for the year ended on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and in the course of such audit I did complete interim examinations of the said account on the following dates: \_\_\_\_\_; and did complete the final audit of the said account on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

3. That the paper writing hereto annexed marked "A" which is dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and signed by me, is a true and correct report of the result of such audit.

4. That I was not at any time during which I was conducting the audit referred to in the said annexed report nor at any time within one year of my engagement by the said solicitor(s) to conduct the said audit a clerk servant or partner of the said solicitor(s) and that I was not at any time during which I was conducting the said audit a clerk or servant of any other practising solicitor or myself a practising solicitor and that neither I nor any member of my firm or staff was at any time during which I was conducting the said audit engaged or concerned in keeping the books of the said solicitor(s) [otherwise than in the completion of the closing entries at the end of a financial year or the preparation of the profit and loss account balance sheet or returns for taxation].

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of [the Oaths and Declarations Act 1957].

Declared at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, before me—

\_\_\_\_\_  
Justice of the Peace [or  
Solicitor, or Notary  
Public, etc.].

In clause 1 the New Zealand Society of Accountants Act 1958, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed New Zealand Society of Accountants Act 1908.

In clause 2, s. 75 of the Law Practitioners Act 1955, being the corresponding enactment in force at the date of this reprint, has been substituted for s. 47 of the repealed Law Practitioners Act 1931.

Clause 4 was substituted for the original clause 4 by regulation 10 of S.R. 1943/25.

In the declaration the Oaths and Declarations Act 1957, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Justices of the Peace Act 1927.

C. A. JEFFERY,  
Clerk of the Executive Council.

---

*Certified for the purposes of section 7 of the Regulations Act 1936,  
this 16th day of March 1959.*

H. G. R. MASON, *Attorney-General.*

---

Issued under the authority of the Regulations Act 1936.

Date of notification of principal regulations in *Gazette*: 17 March 1938.

These regulations are administered in the Department of Justice.