



## SOLICITORS' TRUST ACCOUNT REGULATIONS 1998

MICHAEL HARDIE BOYS, Governor-General

### ORDER IN COUNCIL

At Wellington this 16th day of February 1998

Present:

THE HON JENNY SHIPLEY PRESIDING IN COUNCIL

PURSUANT to section 91 of the Law Practitioners Act 1982, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations.

#### ANALYSIS

1. Title and commencement
2. Interpretation

#### PART 1

##### DUTIES RELATING TO SOLICITORS' TRUST ACCOUNTS

##### *Duties of Solicitors in Regard to Trust Accounts and Clients' Money*

3. Solicitor's duty to account for trust money and keep trust account records
4. Trust bank accounts
5. Trust accounts not to be overdrawn
6. Restriction on certain transactions involving money of solicitors' clients

##### *Restrictions on Use of Solicitors' Trust Accounts*

7. Restriction on use of trust accounts for personal transactions
8. Restriction on debiting trust accounts with fees
9. Fees and disbursements paid in advance of invoice

#### PART 2

##### REVIEWS BY LAW SOCIETY INSPECTORATE

10. Review of trust accounts by inspectorate
11. Solicitor to make certain records available to inspectorate
12. Bank and banker to supply inspectorate with certain information
13. Report of results of review

14. Disclosure of information relating to review

PART 3

AUDIT OF SOLICITORS' TRUST ACCOUNTS

15. Restriction on stating trust accounts have been audited  
 16. Absolute disqualification as auditor  
 17. Persons closely related by blood or marriage may be disqualified as auditors

PART 4

LAW SOCIETY INSPECTORATE

18. Functions of inspectorate

19. Powers of inspectorate  
 20. Delegation by inspector  
 21. Fees and costs of inspectorate

PART 5

MISCELLANEOUS PROVISIONS

22. Appeals  
 23. Information may be given on behalf of firm by partner or authorised employee  
 24. Offences  
 25. Revocations and savings

REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Solicitors' Trust Account Regulations 1998.

(2) These regulations come into force on 1 April 1998.

**2. Interpretation**—(1) In these regulations, unless the context otherwise requires,—

“Act” means the Law Practitioners Act 1982:

“Chartered accountant” has the same meaning as in section 2 of the Institute of Chartered Accountants of New Zealand Act 1996:

“Client”, in relation to a solicitor, includes any person on whose behalf money is, or securities are, held by the solicitor:

“Client assets” means any assets, including money, of a client of a solicitor that are under the management, whether temporary or permanent, of the solicitor:

“Council” means the Council of the New Zealand Law Society:

“Executive Director” means the Executive Director of the New Zealand Law Society:

“Inspector” means a person who is appointed to the inspectorate under section 88A (2) of the Act:

“Inspectorate” means the Law Society inspectorate established under section 88A of the Act and—

(a) Includes an inspector; and

(b) Includes a person to whom a function, duty, right, or power has been delegated under regulation 20:

“Officer”—

(a) In relation to the New Zealand Law Society, includes the Executive Director of that society:

(b) In relation to a District Law Society, includes the Secretary of that society:

“Review”, in relation to the trust accounts of a solicitor, has the meaning set out in subclause (2):

“Rules” means any rules made under paragraph (e) or paragraph (g) of section 17 (2) of the Act:

“Secretary”, in relation to a District Law Society, includes any Executive Director of that society:

“Solicitor” means a solicitor within the meaning of section 2 of the Act who is in practice on his or her own account, and includes a firm of those solicitors and every partner of that firm; and, in

regulations 6, 11, and 22, also includes a solicitor within the meaning of the Act:

“Spouse”, in relation to a person, includes any person who, although not legally married to the first-mentioned person, lives as that person’s wife, husband, or partner on a domestic basis:

“Trust account”, in relation to a solicitor, means any account kept by the solicitor in relation to trust money received by the solicitor:

“Trust account records”, in relation to a solicitor, means—

(a) All records (including all books, papers, files, accounts, statements, invoices or copies of invoices, documents, receipts and evidence of authority for payments, cheques, securities, and trust receipt forms used and unused) relating to the solicitor’s trust accounts or to trust money received by the solicitor, whether kept in writing or on computer or machine or in any other manner; and

(b) If any of those records are kept on computer, includes the relevant computer equipment and software:

“Trust bank account”, in relation to a solicitor, means any account at a bank in New Zealand either in the name of that solicitor or in the name of a firm in which that solicitor is a partner or is held out to be a partner and which is designated as a trust account or into which trust money is deposited:

“Trust money” means all money that is, when received by a solicitor, subject to the provisions of section 89 of the Act.

(2) In these regulations, a reference to a review of the trust accounts of a solicitor—

(a) Is a reference to a review of the controls and procedures established and implemented by the solicitor for the purpose of ensuring that he or she complies with the provisions of the Act relating to trust accounts, these regulations, and any rules; and

(b) Includes the review of any of the solicitor’s trust account records, and the records and information referred to in regulation 11, for the purpose of reviewing those controls and procedures.

## PART 1

### DUTIES RELATING TO SOLICITORS’ TRUST ACCOUNTS

#### *Duties of Solicitors in Regard to Trust Accounts and Clients’ Money*

**3. Solicitor’s duty to account for trust money and keep trust account records**—(1) Every solicitor who receives or holds trust money must—

(a) Account properly for trust money to his or her clients; and

(b) Keep trust account records in such a manner as to disclose clearly the position of the trust money in the solicitor’s trust accounts and to enable them to be conveniently and properly reviewed by the inspectorate.

(2) Subclause (1) (b) does not apply to a solicitor who—

(a) Does not handle trust money or client assets, invest money for any client, have a trust bank account, or receive fees or disbursements in advance of an invoice being issued; and

(b) Has, during the preceding 12 months, certified in writing to the Executive Director and the relevant District Law Society that he or she—

- (i) Has not done any of the things specified in paragraph (a) during the preceding 12 months; and
- (ii) Does not intend to do any of those things during the following 12 months.

**4. Trust bank accounts**—Every solicitor must ensure that—

- (a) Each trust bank account of the solicitor is designated “trust account”; and
- (b) The bank and any other interested parties are put on notice that the money in each trust bank account of the solicitor is trust money.

**5. Trust accounts not to be overdrawn**—(1) If the trust accounts held by a solicitor for a particular client, taken as a whole, would, but for compliance with this subclause, be overdrawn, the solicitor must immediately lend to that client either directly, or indirectly through an advance account, from the solicitor’s own funds the amount necessary to prevent the trust accounts of that client being overdrawn.

(2) No advance account, or other account representing the solicitor’s own interest in the trust accounts, may be overdrawn at any time.

(3) In this regulation, the term “advance account” means an account (by whatever name called) in which funds of a solicitor are kept for the purpose of loans to clients whose trust accounts would otherwise be overdrawn.

**6. Restriction on certain transactions involving money of solicitors’ clients**—(1) A solicitor acting in that capacity must not cause or permit money of any client of the solicitor or the solicitor’s firm to be lent, or credit to be otherwise provided by a client, to any of the following persons:

- (a) The solicitor;
- (b) Any parent, sibling, child, or spouse of the solicitor;
- (c) Any body corporate, partnership, or trust if the principal financial benefit or the effective control is vested directly or indirectly in any of the persons referred to in paragraphs (a) and (b).

(2) Despite subclause (1), a solicitor may cause or permit money of a client to be lent, or credit to be otherwise provided, to any of the persons referred to in paragraphs (a) to (c) of that subclause if—

- (a) The client obtains legal advice and representation in respect of that loan, or provision of credit, from an independent solicitor; or
- (b) The client is a financial institution that normally instructs borrowers’ solicitors to prepare loan or credit or security documentation in respect of loans made or credit provided by that client.

(3) A solicitor acting in that capacity must not cause or permit any rent, interest, instalments, or debts due to a client of the solicitor or the solicitor’s firm to be collected by any person, other than the solicitor’s firm, referred to in paragraph (b) or paragraph (c) of subclause (1).

(4) Nothing in this regulation prevents the operation of a solicitor’s nominee company.

*Restrictions on Use of Solicitors’ Trust Accounts*

**7. Restriction on use of trust accounts for personal transactions**—(1) The trust accounts of a solicitor must not be used for the private or household transactions of—

- (a) The solicitor; or

- (b) Any employee of the solicitor; or
- (c) Any spouse of the solicitor or employee.

(2) Despite subclause (1), the trust accounts of a solicitor may be used for the property or investment transactions of any person referred to in that subclause if they are—

- (a) Kept in a separate ledger account in the name of the person concerned; and
- (b) Dealt with in all respects as if the person was a client.

**8. Restriction on debiting trust accounts with fees**—(1) No trust account may be debited with any fees of a solicitor (except commission properly chargeable on the collection of money and disbursements), unless—

- (a) A dated invoice has been issued in respect of those fees, and a copy of the invoice is available for inspection by the inspectorate; or
- (b) An authority in writing in that behalf, signed and dated by the client, specifying the sum to be so applied and the particular purpose to which it is to be applied has been obtained and is available for inspection by the inspectorate.

(2) If fees are debited under subclause (1) (a) before an invoice is delivered or posted to the person liable for payment or to that person's solicitor, an invoice must be delivered or posted to that person or to that person's solicitor immediately after the fees are debited.

**9. Fees and disbursements paid in advance of invoice**—All money paid to a solicitor in respect of professional services for which an invoice has not been issued, whether described as a retainer or otherwise, must be retained in a trust account until it is disbursed on the client's behalf or applied in payment of fees in accordance with regulation 8.

## PART 2

### REVIEWS BY LAW SOCIETY INSPECTORATE

**10. Review of trust accounts by inspectorate**—Subject to regulation 22, every solicitor must, upon the inspectorate's request,—

- (a) Permit the inspectorate to perform a review of the solicitor's trust accounts; and
- (b) Produce to the inspectorate any trust account records of the solicitor as the inspectorate may require, and assist the inspectorate to take photocopies of those records; and
- (c) Give to the inspectorate any information relating to the trust account records of the solicitor that the inspectorate may require; and
- (d) Take all practicable steps to obtain from a client any information relating to trust money required from that client by the inspectorate.

**11. Solicitor to make certain records available to inspectorate**—

(1) Subject to regulation 22, every solicitor must, upon the inspectorate's written request, make available to the inspectorate any of the following:

- (a) All personal financial records and business records of the solicitor:
- (b) A list of every asset and liability of the solicitor.
- (2) The list referred to in subclause (1) (b) must—
  - (a) Be in writing signed by the solicitor; and
  - (b) State the assets and liabilities (whether actual or contingent) as at a date not earlier than the date of the request; and

- (c) State all assets and liabilities disposed of during the 6 months immediately before the date of the list (other than assets and liabilities disposed of in the normal course of private and household transactions).

**12. Bank and banker to supply inspectorate with certain information**—Every bank and every banker must, upon the inspectorate's written request, and without reference to the solicitor whose trust accounts are being reviewed by the inspectorate, provide the inspectorate with—

- (a) A list of the accounts operated by the solicitor; and
- (b) Any information about the bank accounts of that solicitor, or about any account that the solicitor operates or has authority to operate, as may reasonably be required for the purposes of the review of the solicitor's trust accounts.

**13. Report of results of review**—(1) The inspectorate must, as soon as practicable after the completion of its review of a solicitor's trust accounts, give a report of the results of the review to—

- (a) The President or Council of the New Zealand Law Society or to any other officer or employee of the New Zealand Law Society authorised by the President of that society to receive the report; and
- (b) The President or Council of the relevant District Law Society or to any other officer or employee of the District Law Society authorised by the President of that society to receive the report.

(2) The inspectorate is only required to give the report referred to in subclause (1) to the persons specified in that subclause if it—

- (a) Considers that any trust account of a solicitor does not show clearly the trust money balances of each client; or
- (b) Discovers any matter in relation to the practice of a solicitor that appears to the inspectorate to involve dishonesty of the solicitor or of any employee of the solicitor; or
- (c) Discovers any loss or deficiency of trust money or any failure by a solicitor to pay or account for any trust money; or
- (d) Discovers any failure by a solicitor to comply with the provisions of the Act relating to trust accounts, these regulations, or any rules (being a failure that, in the opinion of the inspectorate, is material to the risk to client assets); or
- (e) Considers that any other matter relating to the duties of, and restrictions on, solicitors under the provisions of the Act relating to trust accounts, these regulations, or any rules should be reported.

**14. Disclosure of information relating to review**—(1) The inspectorate must not disclose to any person any information that the inspectorate has obtained in the course of a review of a solicitor's trust accounts.

(2) Nothing in subclause (1) prevents the disclosure of information referred to in that subclause by the inspectorate if the disclosure of information is—

- (a) Permitted or required by these regulations, or any rules, enactment, or rule of law; or

- (b) Required for the purpose of any investigation conducted by the Council of a District Law Society; or
  - (c) Required for the purpose of any proceedings arising out of the inspectorate's review of the solicitor's trust accounts or otherwise in relation to the trust accounts of the solicitor concerned; or
  - (d) Required by—
    - (i) The President, Council of the New Zealand Law Society, or any officer or employee of that society authorised for this purpose by the President;
    - (ii) The President, Council of a District Law Society, or any officer or employee of that society authorised for this purpose by the President; or
  - (e) Required by any member of the police acting in the performance of his or her duty; or
  - (f) With the prior consent of the Council of a District Law Society or the Council of the New Zealand Law Society, required for a purpose relating to the review of those trust accounts.
- (3) The Executive Director of the New Zealand Law Society or the Secretary of a District Law Society may, with the consent of the Council of the relevant society, give to—
- (a) Any person, any information contained in any report of the inspectorate that relates to money or securities in which the person has a legal or beneficial interest; and
  - (b) The Institute of Chartered Accountants of New Zealand, any information that the Institute may require for the purpose of investigations involving its members.

### PART 3

#### AUDIT OF SOLICITORS' TRUST ACCOUNTS

**15. Restriction on stating trust accounts have been audited**—(1) A solicitor must not state publicly or to any client that his or her trust accounts have been audited, unless—

- (a) The trust accounts have been audited during the immediately preceding period of 12 months by a qualified auditor; and
- (b) A copy of the auditor's report has been sent to the Executive Director.

(2) For the purposes of this regulation, "qualified auditor" means—

- (a) A chartered accountant who holds a certificate of public practice (within the meaning of section 2 of the Institute of Chartered Accountants of New Zealand Act 1996) and who is not disqualified under regulation 16 or regulation 17; or
- (b) A partnership more than half of whose partners are persons described in paragraph (a).

**16. Absolute disqualification as auditor**—(1) A chartered accountant is not qualified to audit the trust accounts of a solicitor if—

- (a) The chartered accountant is, or at any time within the immediately preceding period of 1 year has been, a partner or an employee of the solicitor; or
- (b) The chartered accountant is an employee of any other solicitor in practice on his or her own account or in partnership; or
- (c) The chartered accountant is a solicitor in practice on his or her own account or in partnership; or

(d) The chartered accountant (or any partner or employee of the chartered accountant) is, or at any time within the immediately preceding period of 1 year has been, engaged in keeping the books of the solicitor.

(2) Nothing in subclause (1) prevents the completion for a solicitor by an auditor, or by a partner or an employee of an auditor, of the closing entries at the end of a year or other period, or the preparation of the statement of financial position, statement of financial performance, or returns for taxation of the solicitor.

**17. Persons closely related by blood or marriage may be disqualified as auditors**—If a chartered accountant is so closely related by blood or marriage to a solicitor whose trust accounts the chartered accountant is auditing that, in the opinion of the Council, the audit of that solicitor's trust accounts by the chartered accountant is undesirable, the Council may notify the solicitor to that effect, and upon notification the chartered accountant is no longer qualified to audit any trust accounts of that solicitor.

#### PART 4

##### LAW SOCIETY INSPECTORATE

**18. Functions of inspectorate**—The functions of the inspectorate are as follows:

- (a) To review, under the general direction of the Council, the trust accounts of solicitors:
- (b) To assist in the education of solicitors and their staff in the matters to which these regulations and any rules relate.

**19. Powers of inspectorate**—(1) The inspectorate has, and may exercise, any powers as are reasonably necessary or expedient to enable it to carry out its functions and may exercise them only for the purpose of carrying out its functions.

(2) Without limiting subclause (1), the inspectorate—

- (a) May communicate directly with any clients of a solicitor and any other persons for the purpose of establishing whether the provisions of the Act relating to trust accounts, these regulations, and any rules have been complied with by the solicitor; and
- (b) Has the powers specified in regulations 10 to 14 and 20 to 22.

**20. Delegation by inspector**—(1) An inspector may, by a document signed by the inspector, delegate any function, duty, right, or power conferred on that inspector in his or her capacity as a member of the inspectorate (other than this power of delegation) to any 1 or more persons (including a firm of chartered accountants) approved for this purpose by the Council.

(2) Subject to any general or special directions given or conditions attached by the inspector making the delegation, the person or persons to whom any functions, duties, rights, or powers are delegated (or, if the delegation is to a firm of chartered accountants, each partner of that firm) may perform and exercise them in the same manner and with the same effect as the inspector making the delegation.

(3) Every person purporting to act under a delegation under this regulation is, on production of the document referred to in subclause (1) and in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

(4) Every delegation under this regulation is revocable at will, but any such revocation does not affect anything done under the delegated authority and does not take effect until communicated to the delegate.

(5) No delegation under this regulation prevents the performance of any function or duty or the exercise of any right or power by the inspector who made the delegation.

**21. Fees and costs of inspectorate**—(1) A solicitor whose trust accounts have been reviewed by the inspectorate must, on written demand by the inspectorate or the New Zealand Law Society,—

(a) Pay the fees of the inspectorate for performing the review (or, if the New Zealand Law Society has already paid those fees, reimburse the Society for those fees):

(b) Reimburse the inspectorate for all costs reasonably incurred by it in performing the review (or, if the New Zealand Law Society has already paid those costs, reimburse the Society for those costs).

(2) The amount of fees payable by a solicitor under subclause (1) (a) is determined by multiplying a remuneration rate or rates (being a rate or rates approved by the Council for the purposes of this subclause) by the time reasonably spent by the inspectorate in performing the review.

(3) Every amount payable by a solicitor to the inspectorate or the New Zealand Law Society under this regulation is a debt due to the New Zealand Law Society by the solicitor, and, subject to regulation 22, may be recovered accordingly in any court of competent jurisdiction.

(4) For the avoidance of doubt, the fees and costs of any person who has performed, or assisted in performing, a review of the trust accounts of a solicitor under a delegation made under regulation 20, are regarded as fees and costs of the inspectorate.

## PART 5

### MISCELLANEOUS PROVISIONS

**22. Appeals**—(1) A solicitor may, within 1 month of receiving a request under regulation 10 or regulation 11 or a written demand under regulation 21, give written notice of appeal to the relevant District Law Society if the solicitor considers that—

(a) Any requirement under regulation 10 or regulation 11 is unreasonable:

(b) Any fees or costs imposed under regulation 21 are unreasonable.

(2) The District Law Society must, upon receiving a notice of appeal under subclause (1),—

(a) Refer the notice to the Joint Audit Board for determination; and

(b) Notify the solicitor and the inspectorate of the meeting of the Joint Audit Board at which the appeal will be determined.

(3) The solicitor and the inspectorate may make written submissions to the Joint Audit Board and, if the Joint Audit Board agrees, may attend and be heard at the meeting of the Joint Audit Board at which the appeal is determined.

(4) The Joint Audit Board may, on any appeal under subclause (1), confirm or vary—

(a) Any requirement under regulation 10 or regulation 11:

(b) The amount of any fees or costs under regulation 21.

(5) The determination of the Joint Audit Board on any appeal under subclause (1) is final.

**23. Information may be given on behalf of firm by partner or authorised employee**—A partner or a person who is employed by a firm of solicitors and who is authorised for the purpose by 1 of the firm's partners may, on behalf of the firm, provide any information that the firm is required to provide under these regulations.

**24. Offences**—(1) Every person commits an offence who fails to comply with or contravenes any of regulations 3 to 12 and 15, and is liable on summary conviction to a fine not exceeding \$10,000.

(2) If a firm of solicitors fails to comply with or contravenes regulation 10 or regulation 11, each partner of that firm commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000.

**25. Revocations and savings**—(1) The Solicitors Audit Regulations 1987\* and the Solicitors Audit Regulations 1987, Amendment No. 1† are revoked.

(2) The regulations revoked by subclause (1), despite their revocation, continue to apply to any audit of any trust account for the year ending on, or any year ending before, the close of 31 March 1998 and to all matters arising out of that audit or any failure to make or complete that audit as fully as if they had not been revoked.

MARIE SHROFF,  
Clerk of the Executive Council.

\*S.R. 1987/333

†S.R. 1988/58

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#### EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 April 1998, replace the Solicitors Audit Regulations 1987.

In particular, the regulations—

- (a) Prescribe the duties of solicitors in regard to trust accounts;
- (b) Provide for the review of the controls and procedures of firms of solicitors by the Law Society inspectorate to ensure compliance with certain legislative requirements in respect of solicitors' trust accounts. Reviews by the inspectorate will be carried out from time to time, instead of the regular examinations and audits of solicitors' trust accounts that were previously required under the 1987 regulations;
- (c) Provide the circumstances in which chartered accountants may be disqualified from acting as auditors of solicitors' trust accounts. Although audits will, in effect, be replaced with reviews by the Law Society inspectorate, solicitors' trust accounts may still be audited;
- (d) Prescribe the functions, duties, rights, and powers of the Law Society inspectorate, and authorise any inspector appointed to the inspectorate to delegate those functions, duties, rights, and powers.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 19 February 1998.

These regulations are administered in the Ministry of Justice.