**Version**
**as at 1 July 2022**

# Lawyers and Conveyancers Act (Trust Account) Regulations 2008

(SR 2008/183)

Rt Hon Dame Sian Elias, Administrator of the Government

## Order in Council

At Wellington this 30th day of June 2008

Present:
Her Excellency the Administrator of the Government in Council

Pursuant to section 115 of the Lawyers and Conveyancers Act 2006, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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**Note**

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**These regulations are administered by the Ministry of Justice.**

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## Regulations

### 1 Title

These regulations are the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

### 2 Commencement

These regulations come into force on 1 August 2008.

### 3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

**Act** means the Lawyers and Conveyancers Act 2006

**chartered accountant** has the same meaning as in section 2 of the New Zealand Institute of Chartered Accountants Act 1996

**client**, in relation to a practice, includes any person on whose behalf money is, or securities are, held by the practice

**client assets** means any assets, including money, of a client of a practice that are under the management, whether temporary or permanent, of the practice

**contributory security** means a security (including a mortgage of land, charge, or other security interest) granted in favour of more than 1 person, each of whom is named, and whose share is specified in the security (and for the purposes of this definition, persons acting jointly must be treated as 1 person)

**inspector** means a person who is appointed to the inspectorate under regulation 24

**inspectorate** means 1 of the inspectorates established under these regulations and—

(a) includes an inspector; and

(b) includes a person to whom a function, duty, right, or power has been delegated under regulation 27

**lawyers nominee company** means a nominee company referred to in section 96(a) of the Act

**officer**, in relation to the New Zealand Law Society, includes the executive director

**partner** means a practitioner who is or is held out to be a partner of another practitioner providing regulated services and **partnership** has a corresponding meaning

**practice** means and includes a sole practitioner, a partnership, and an incorporated firm

**review**, in relation to the trust accounts of a practice, has the meaning set out in subclause (2)

**society** means—

(a) the New Zealand Law Society; and

(b) the New Zealand Society of Conveyancers

**trust account records**, in relation to a practitioner, 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 practitioner's trust accounts or to trust money received by the practitioner, 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 account supervisor** has the meaning set out in regulation 16

**trust bank account**, in relation to a practice, means any account at a bank in New Zealand—

(a) in the name of the practice; and

(b) that is designated as a trust account or into which trust money is deposited

**trust money** means all money that is, when received by a practice, subject to the provisions of section 110 of the Act

**voting shareholder**, in relation to an incorporated firm, means the shareholders referred to in paragraph (c)(i) of the definitions of **incorporated conveyancing firm** and **incorporated law firm** in section 6 of the Act.

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

(a) is a reference to a review of the controls and procedures established and implemented by the practice for the purpose of ensuring that the provisions of the Act relating to trust accounts, these regulations, and any applicable rules are complied with; and

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

Regulation 3(1) **chartered accountant**: amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

# Part 1
# Duties relating to trust accounts of practices

*Duties of practices in regard to trust accounts and clients' money*

### 4 Duties of practices to give notice under section 112(2) of Act

(1) Every practice that relies on section 112(2) of the Act must certify in writing to the relevant society, not later than 31 March in each year, that it—

(a) has not done any of the things specified in section 112(2)(b) of the Act during the preceding 12 months; and

(b) does not intend to do any of those things during the following 12 months.

(2) Any practice that has certified in writing as required by subclause (1) and that, within the 12-month period referred to in subclause (1)(b), is no longer entitled to rely on section 112(2) of the Act, must immediately notify the relevant society accordingly.

### 5 Trust bank accounts

Every sole practitioner, every partner, and every voting shareholder must ensure that—

(a) each trust bank account of their practice 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 practice is trust money.

### 6 Trust accounts not to be overdrawn

(1) If the trust accounts held by a practice for a particular client, taken as a whole, would, but for compliance with this subclause, be overdrawn, the practice must immediately lend to that client the amount necessary to prevent the trust accounts of that client being overdrawn.

(2) Any amount lent by a practice to a client under subclause (1) must be lent directly, or indirectly through an advance account, from the practice's own funds.

(3) No advance account of the practice, or other account representing a sole practitioner's, partner's, or voting shareholder's own interest in the trust accounts, may be overdrawn at any time.

(4) In this regulation, **advance account** means an account (however described) in which funds of a practice are kept for the purpose of loans to clients whose trust accounts would otherwise be overdrawn.

### 7 Restriction on certain transactions involving money of clients of practice

(1) A practice must not authorise or permit money of any client of the practice to be lent, or credit to be otherwise provided by a client, to any of the following persons:

(a) the sole practitioner, partnership, or incorporated firm:

(b) any partner or voting shareholder:

(c) any parent, sibling, child, spouse, or civil union partner of the practitioner, partner, or voting shareholder:

(d) 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), (b), and (c).

(2) Despite subclause (1), a practice may authorise or permit money of a client to be lent, or credit to be otherwise provided, to any of the persons referred to in subclause (1)(a) to (d) if—

(a) the client obtains legal advice and representation in respect of that loan, or provision of credit, from an independent lawyer; or

(b) the client is a financial institution that normally instructs the borrower's practitioner to prepare loan or credit or security documentation in respect of loans made or credit provided by that client.

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

(4) Nothing in this regulation prevents the operation of a practice's lawyers nominee company.

*Restrictions on use of trust accounts of practices*

### 8 Restriction on use of trust accounts for personal transactions

(1) The trust accounts of a practice must not be used for the private or household transactions of—

(a) the sole practitioner, partners, or voting shareholders; or

(b) any employee of the practice; or

(c) any spouse or civil union partner of the sole practitioner, partners, voting shareholders, or employees.

(2) Despite subclause (1), the trust accounts of a practice 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.

### 9 Restriction on debiting trust accounts with fees

(1) No trust account may be debited with any fees of a practice (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), an invoice must be delivered or posted to the person who has a legal or beneficial interest in the trust account to be debited before or immediately after the fees are debited.

(3) For the purposes of subclause (2), a practitioner or partner in the practice is not to be treated as having a legal or beneficial interest in the trust account to be

debited, solely because the practitioner or partner issues the invoice in respect of that trust account.

### 10 Fees and disbursements paid in advance of invoice

All money paid to a practice 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—

(a) disbursed on the client's behalf; or

(b) applied in payment of fees in accordance with regulation 9.

## Part 2
## Trust account records

### 11 Trust account records

(1) It is the duty of every practice required by section 112(1) of the Act to keep records in respect of trust accounts to do so in such a manner as to enable them to be conveniently and properly reviewed by the inspectorate.

(2) Trust account records must be up to date, clearly show the amount of the trust money held for each client, and as far as practicable be secure against retrospective alteration or deletion.

(3) All entries in the client ledger accounts, and in other records that are the source of such entries, must—

(a) be dated; and

(b) include references that identify their source or destination and enable them to be traced backward and forward.

(4) All entries in the journal must include sufficient detail to make their purpose evident.

(5) Trust account records relating to a client must be retained for a period of at least 6 years from the date of the last transaction recorded in them, but—

(a) may be retained after the first 3 years, in the form of microfilm, imaging, or other similar technology; or

(b) in the case of computer-generated trust account records originated by the practitioner, may be retained in the form of electronic storage, microfilm, imaging, or similar technology.

### 12 Receipt and payment of trust money

(1) Every receipt, payment, transfer, and balance of trust money must be recorded in a trust account ledger with a separate ledger account for each client and—

(a) the recording must as far as practicable be secure against retrospective alteration or deletion; and

(b) no ledger account may contain money of more than 1 client, but a client's account may be subdivided into various matters.

(2) For the purposes of subclause (1), a joint client must be treated as a single client.

(3) Any trust money received by a practice must be recorded promptly and accurately in that practice's trust account receipt records and the relevant client ledger account.

(4) For the purposes of subclause (3), each such entry of the receipt of trust money must state—

(a) the amount, date, purpose, and source of the receipt; and

(b) the client for whom the trust money is to be held.

(5) Where trust money is paid in cash to a practice, or the payer of the trust money so requests, a receipt must be given to the payer (**trust receipt**) and a copy of the trust receipt must be retained by the practice in electronic or paper form.

(6) A practice may make transfers or payments from a client's trust money only if—

(a) the client's ledger account has sufficient funds and they are available for that purpose; and

(b) the practice obtains the client's instruction or authority for the transfer or payment, and retains that instruction or authority (if in writing) or a written record of it; and

(c) payments to a third party are made in a form that permits the crediting of the money only to the account of the intended payee; and

(d) transfers to another client are by way of trust journal entry.

(7) Each practice must provide to each client for whom trust money is held a complete and understandable statement of all trust money handled for the client, all transactions in the client's account, and the balance of the client's account,—

(a) in respect of ongoing investment transactions, at intervals of not more than 12 months; and

(b) in respect of all transactions that are not completed within 12 months, at intervals of not more than 12 months; and

(c) in respect of all other transactions, promptly after or prior to the completion of the transaction.

### 13 Form and approval of trust receipts

(1) Where a practice produces its trust receipts by computer,—

(a) every issue of a trust receipt must be recorded electronically; and

(b) the computer system must, as far as practicable, ensure that the electronic record cannot be altered or deleted.

(2) Where a practice obtains trust receipt forms from an outside supplier, the supplier must first be approved by the relevant society.

(3) All trust receipts must be numbered sequentially and must include the following:

(a) the name of the practice:

(b) the person from whom the trust money is received:

(c) the person to be credited with the trust money:

(d) a brief description of the purpose for which the trust money is received:

(e) the amount, in words and figures, of trust money received:

(f) the date of issue of the trust receipt:

(g) the signature of the practitioner, cashier, or other person authorised by the practice to sign trust receipts:

(h) the words "official receipt form for trust moneys":

(i) an indication whether the trust money is received by cheque, cash, or bank transfer.

## 14 Trust bank accounts

(1) Each practice must ensure that each trust bank account is reconciled with the trust ledger as at the end of every month.

(2) The reconciliations must be completed by the tenth working day of the following month (except when the following month is January, in which case they must be completed by the 15th working day of January).

## 15 Cessation of practice

(1) If a practice ceases to provide regulated services, the practice must immediately—

(a) deliver all unused trust account receipt forms relating to the practice to the relevant society or dispose of them as directed by that society; and

(b) ensure that all trust bank accounts are closed and all money in them paid to the persons entitled; and

(c) if it generates receipt forms electronically, take appropriate steps to ensure that no further trust account receipts are generated.

(2) If a practitioner who is not in partnership and is not a director of an incorporated firm with more than 1 director dies, the relevant society must, unless the practice is being conducted under section 44 and Schedule 1 of the Act, immediately—

(a) take charge of all unused trust account receipt forms relating to the practice and dispose of them as it thinks fit; and

(b) ensure that all trust bank accounts are closed and all money in them paid to the persons entitled.

# Part 3
# Trust account supervisors, reporting, and training

## 16 Trust account supervisor

(1) In this Part, **trust account supervisor** means—

(a) a partner appointed as a trust account supervisor under subclause (2); or

(b) in the case of a sole practitioner who is not in partnership, that practitioner; or

(c) in the case of an incorporated firm, a director of the incorporated firm appointed as a trust account supervisor under subclause (3).

(2) Every partnership must at all times have a trust account supervisor for each office of the partnership having separate trust account records, and that trust account supervisor must be a person appointed in that capacity by the partnership.

(3) Every incorporated firm must at all times have a trust account supervisor for each office of the incorporated firm having separate trust account records, and that trust account supervisor must be a person appointed in that capacity by the board of directors of the incorporated firm.

(4) Every trust account supervisor—

(a) is responsible for the administration of the trust accounting of the practice:

(b) is responsible for ensuring—

(i) that the provisions of the Act relating to trust accounts, these regulations, and any practice rules made under section 94(k) of the Act are complied with by the practice; and

(ii) if the practitioners in the practice in respect of which the trust account supervisor has been appointed are lawyers, that any practice rules relating to lawyers nominee companies are complied with by the practice:

(c) must take appropriate measures to verify the correctness of, and sign, all reports required by these regulations (unless prevented by temporary absence or incapacity; in which case another partner or director, if any, may take those measures and sign).

(5) The appointment of a trust account supervisor does not remove or diminish the responsibilities and liabilities of any partners of the trust account supervisor or other directors of the incorporated firm for financial matters affecting the practice.

## 17 Periodic reporting

(1) Every trust account supervisor must certify to the relevant society, by the tenth working day of each month (or in January, the 15th working day),—

(a) whether, as at the end of the preceding month,—

(i) the trust ledger was correctly reconciled with the corresponding trust bank accounts for both the general trust account and interest-bearing deposit accounts; and

(ii) the trust account records were a complete and accurate record of transactions during the month and of each client's position; and

(b) whether he or she is satisfied that during the month concerned—

(i) trust account transactions during the month have been in accordance with client instructions and, where completed, properly accounted for to clients; and

(ii) the practice has complied with—

(A) these regulations, any practice rules made under section 94(k) of the Act, and, if not, the reasons why not; and

(B) if the practitioners in the practice in respect of which the trust account supervisor has been appointed are lawyers, any practice rules relating to lawyers nominee companies and, if not, the reasons why not.

(2) Every trust account supervisor (other than a trust account supervisor of a practice comprising conveyancing practitioners) must certify to the New Zealand Law Society in writing, by the tenth working day after the end of each of the quarters of March, June, and September and the 15th working day after the end of the December quarter in each year, the following information in respect of the quarter concerned:

(a) whether the collection of interest on any loans or other debt securities was undertaken on behalf of lenders by the practice during the quarter:

(b) the number and total dollar amount of those loans or securities, and of each group of loans or securities specified by the relevant society from time to time:

(c) whether any of the borrowers are in default for more than 30 days in payment of any principal, interest, or other moneys payable under any of those loans or securities and, if so, the total amount of—

(i) interest in default; and

(ii) principal in default; and

(iii) other moneys in default.

(3) For the purposes of this regulation,—

(a) a certificate is valid if submitted on the Internet in the manner prescribed by the relevant society for the purpose; and

(b) where a certificate is submitted on the Internet, it is deemed to have been submitted in writing and signed by the trust account supervisor if a pass-

word provided for this purpose to the trust account supervisor has been used; and

(c) the trust account supervisor is responsible for maintaining the security of the password.

### 18 Practice required to give notice in certain cases

(1) A practitioner must give notice of any of the following events to the relevant society in accordance with subclauses (2) and (3):

(a) the practitioner commences or recommences practice, or opens a branch office (whether or not it has separate trust account records), whether alone or in partnership or as a voting shareholder of an incorporated firm, and whether or not the practitioner has previously been, or remains, in practice in any other place; or

(b) the practitioner's practice or branch office is amalgamated with the practice or a branch office of any other practitioner; or

(c) there is a change in membership or a dissolution (whether on the death or retirement of a partner, or the admission of a new partner, or voting shareholder or otherwise) of a practice of which a practitioner is a partner or voting shareholder; or

(d) the practitioner ceases to practise, or ceases to operate any branch office (while continuing to carry on practice); or

(e) a trust account supervisor is appointed, or ceases to act as such, for a practice of which the practitioner is a partner or voting shareholder; or

(f) there is a change in location or postal address of any office from which the practitioner carries on practice; or

(g) there is a change in the name under which the practitioner carries on practice.

(2) Every notice required by subclause (1) must state the date of the event and,—

(a) in any case to which subclause (1)(c) applies, the name of the partner who has left or joined the practice:

(b) in any case to which subclause (1)(e) applies, the name of the trust account supervisor concerned:

(c) in any case to which subclause (1)(f) or (g) applies, both the old and new location, postal address, or name as the case may be.

(3) Every notice required by subclause (1) must be in writing signed by the practitioner and be given,—

(a) in any case to which subclause (1)(a) or (b) applies, before the occurrence of the event of which notice is required to be given; and

(b) in any other case, within 2 weeks after the occurrence of the event.

### 19 Training in trust accounting

(1) Every practitioner in a practice to which section 112(1) of the Act applies must, before commencing practice on his or her own account, complete a course of training, and pass an examination in trust accounting, prescribed by and to a standard set by the relevant society.

(2) Every practitioner who has not previously completed a course of training in accordance with Schedule 1 or 2 of these regulations or Appendix A or B of the Solicitors' Trust Account Rules 1996 must complete a course of training, and pass examinations and assessments, in accordance with Schedule 1 of these regulations and otherwise as prescribed—

(a) during the 3 years immediately before taking up the position of trust account supervisor for the first time; or

(b) if acting as a trust account supervisor under an exemption under regulation 20(2) or (4) and intending to act as such after the date on which that exemption ends, before that date.

(3) Every practitioner who has previously completed a course of training in accordance with Schedule 1 or 2 of these regulations or Appendix A or B of the Solicitors' Trust Account Rules 1996 must complete the course prescribed in Schedule 2 of these regulations,—

(a) if more than 3 years have elapsed between completing the course and taking up the position of trust account supervisor for the first time; or

(b) if more than 10 years have elapsed since that practitioner has acted as a trust account supervisor.

(4) This regulation is subject to regulation 20.

### 20 Exemptions

(1) Subclause (2) applies if—

(a) a trust account supervisor of a practice dies, becomes permanently incapacitated, or leaves the practice on less than 6 months' notice; and

(b) the practice has no practitioner who has completed the course prescribed in either Schedule 1 or 2 of these regulations.

(2) If this subclause applies, the practitioner appointed by the practice to act as its new trust account supervisor is exempt from the requirements of regulation 19(2) for a period of 12 months from the date on which he or she is appointed.

(3) Subclause (4) applies if—

(a) a trust account supervisor of a practice unexpectedly ceases, or wishes to cease, to act as such for any reason other than those specified in subclause (1)(a); and

(b) the practice has no practitioner who has completed the course prescribed in either Schedule 1 or 2 of these regulations.

(4) If this subclause applies, the relevant society may, in its discretion and on such conditions as the society thinks fit, exempt a practitioner of the practice from the requirements of regulation 19(2) for a period not exceeding 12 months from the date on which the practitioner is appointed as trust account supervisor.

(5) Where there are exceptional circumstances, the relevant society may, in its discretion and on such conditions as the society thinks fit, grant—

(a) individual exemptions to the requirements imposed under regulation 19(2) or (3); and

(b) individual extensions to exemptions under subclause (4) of this regulation.

(6) Conveyancing practitioners are exempt from the requirements of regulation 19(1) to (3) for a period of 12 months from the commencement of these regulations.

# Part 4
# Audit of practitioners' trust accounts

## 21 Restriction on stating trust accounts have been audited

(1) A practice must not state publicly or to any client that its 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 relevant society.

(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 New Zealand Institute of Chartered Accountants Act 1996) and who is not disqualified under regulation 22 or 23; or

(b) a partnership more than half of whose partners are persons described in paragraph (a).

Regulation 21(2)(a): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

## 22 Absolute disqualification as auditor

(1) A chartered accountant is not qualified to audit the trust accounts of a practice if—

(a) the chartered accountant is, or at any time within the immediately preceding period of 12 months has been, a partner or an employee of the practice; or

(b) the chartered accountant is an employee of any other practice; or

(c) the chartered accountant is a practitioner in practice on his or her own account or in partnership, or a voting shareholder in an incorporated firm; 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 12 months has been, engaged in keeping the books of the practice.

(2) Nothing in subclause (1) prevents the completion for a practice by an auditor, or by a partner or an employee of an auditor, of—

(a) the closing entries at the end of a year or other period; or

(b) the preparation of the statement of financial position, statement of financial performance, or returns for taxation of the practice.

### 23 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 sole practitioner, partner, or voting shareholder in a practice whose trust accounts the chartered accountant is auditing that, in the opinion of the relevant society, the audit of that practice's trust accounts by the chartered accountant is undesirable,—

(a) the relevant society may notify the practice to that effect; and

(b) on notification, the chartered accountant is no longer qualified to audit any trust accounts of that practice.

## Part 5
## Inspectorates

### 24 Establishment of inspectorates

(1) Each society must establish an inspectorate that at any time consists of those persons that are appointed to it from time to time under subclause (2).

(2) Each society must, by written notice to the person and after any consultation that it considers desirable,—

(a) appoint any person having such legal or accounting qualifications and experience as the society considers necessary to its inspectorate as an inspector on any terms and conditions, including terms and conditions as to salary, fees, or expenses, that the society considers appropriate; and

(b) remove any person from the appointment.

(3) The inspectorate has the functions, duties, rights, and powers that are prescribed by these regulations.

(4) Subject to any resolution of the relevant society, each inspectorate may determine its own procedure.

(5) Except as otherwise expressly provided in these regulations, any inspector appointed to an inspectorate under subclause (2) may, either alone or together with any other inspector, exercise or perform any function, duty, right, or power of the inspectorate.

(6) A certificate signed on behalf of the relevant society to the effect that a person is an inspector of one of the inspectorates is, unless the contrary is proved, sufficient evidence that the person is such an inspector.

(7) Every practitioner who is in practice as a sole practitioner or in partnership, or as a voting shareholder of an incorporated firm, or who is employed by a practice, on making application in any year for a practising certificate, must, in addition to all other fees payable by the practitioner, pay the fee from time to time fixed by resolution of the relevant society for the purposes of the inspectorate.

(8) For the purposes of subclause (7), each society may—

(a) fix different fees for different classes of practitioner as determined by the society:

(b) decide not to fix any fee for any class or classes of practitioner as determined by the society.

(9) The inspectorates must report on their operations to the relevant society at the times and in the form required from time to time by the societies.

### 25 Functions of inspectorates

The functions of the inspectorates are as follows:

(a) to review, under the general direction of the relevant society, the trust accounts of practices:

(b) to ensure that practices comply with the requirements of sections 110 to 114 inclusive of the Act and Parts 1 to 4 of these regulations:

(c) to conduct investigations of the affairs of practices and practitioners under Part 7 of these regulations:

(d) to administer the financial assurance schemes for the protection of money entrusted to practices under Part 8 of these regulations:

(e) to assist in the education of practitioners and incorporated firms and their staff in the matters to which these regulations and any rules relate.

### 26 Powers of inspectorates

(1) The inspectorates have, and may exercise, any powers that are reasonably necessary or expedient to enable them to carry out their functions and may exercise them only for the purpose of carrying out their functions.

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

(a) may communicate directly with any clients of a practice 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 practitioner or incorporated firm; and

(b) have the powers specified in regulations 27 to 31 and 38.

### 27 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 relevant society.

(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 that revocation does not affect anything done under the delegated authority and does not take effect until communicated to the delegate.

(5) A delegation under this regulation does not prevent the performance of any function or duty or the exercise of any right or power by the inspector who made the delegation.

### 28 Fees and costs of inspectorate

(1) A practice whose trust accounts have been reviewed by one of the inspectorates must, on written demand by the inspectorate or the relevant society,—

(a) pay the fees of the inspectorate for performing the review (or, if the relevant society has already paid those fees, reimburse the society for those fees); and

(b) reimburse the inspectorate for all costs reasonably incurred by it in performing the review (or, if the relevant society has already paid those costs, reimburse the society for those costs).

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

(3) Every amount payable by a practice to the inspectorate or the relevant society under this regulation is a debt due to the society by the practice, and 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 practice under a delegation made under regulation 27 are to be treated as fees and costs of the inspectorate.

# Part 6
# Reviews by inspectorates

## 29 Review of trust accounts by inspectorates

Every practice must, on the inspectorate's request,—

(a) permit the inspectorate to perform a review of the trust accounts of the practice; and

(b) produce to the inspectorate any trust account records of the practice that the inspectorate requires, and assist the inspectorate to take copies of those records; and

(c) give to the inspectorate any information relating to the trust account records of the practice 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.

## 30 Practices to make certain records available to inspectorates

(1) Every practice must, on the inspectorate's written request, make available to the inspectorate any of the following:

(a) all personal financial records and business records of the practice and, if required by the inspectorate, its partners and voting shareholders:

(b) a list of every asset and liability of the practice and, when applicable, its partners and voting shareholders.

(2) The list referred to in subclause (1)(b) must—

(a) be in writing signed by the practitioner or on behalf of the practice; 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).

### 31 Bank and banker to supply inspectorates with certain information

Every bank and every banker must, on the inspectorate's written request, and without reference to the practice whose trust accounts are being reviewed by the inspectorate, provide the inspectorate with—

(a) a list of the accounts operated by the practice; and

(b) any information about the bank accounts of that practice, or about any account that the practice or practitioner operates or has authority to operate, that may reasonably be required for the purposes of the review of the trust accounts of the practice.

### 32 Report of results of review

(1) If subclause (2) applies the inspectorate must, as soon as practicable after the completion of its review of the trust accounts of a practice, give a report of the results of the review to the relevant society or to any officer or employee of the society or standards committee authorised by the relevant society to receive the report.

(2) The inspectorate is required to give the report referred to in subclause (1) to the relevant society only if it has reasonable cause to suspect that—

(a) any trust account of a practice does not show clearly the trust money balances of each client; or

(b) any matter in relation to the practice appears to the inspectorate to involve dishonesty of the practitioner or any other practitioner or of any employee of the practice; or

(c) there is or has been any loss or deficiency of trust money or any failure by a practice to pay or account for any trust money; or

(d) there is or has been any failure by a practice 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) there is any other matter relating to the duties of, and restrictions on, practices under the provisions of the Act relating to trust accounts, these regulations, or any rules that should be reported.

### 33 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 the trust accounts of a practice.

(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, intervention, or prosecution conducted by a Standards Committee under the Act; or

(c) required for the purpose of any proceedings arising out of the inspectorate's review of the trust accounts of the practice or otherwise in relation to the trust accounts of the practice concerned; or

(d) required by the relevant society, or any officer or employee of that society authorised for this purpose by the relevant society; or

(e) required by any member of the police or Serious Fraud Office acting in the performance of his or her duty; or

(f) with the prior consent of the relevant society, required for a purpose relating to the review of those trust accounts.

(3) The relevant society may give,—

(a) to 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) to the New Zealand Institute of Chartered Accountants, any information that the institute may require for the purpose of investigations involving its members; and

(c) to the other society, any information contained in any report of the inspectorate that concerns a sole practitioner, partner, or incorporated firm and is relevant to the functions of that other society's inspectorate.

Regulation 33(3)(b): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

# Part 7
# Investigations of affairs of practices

## 34 Duties of practices in relation to such examinations

Every practitioner, related person, or entity, and every incorporated firm, must, on an investigator's request,—

(a) permit the investigator to examine his, her, or its accounts; and

(b) produce to the investigator any records required by the investigator and assist the investigator to take copies of those records; and

(c) give to the investigator any information relating to his, her, or its accounts that the investigator may require; and

(d) take all practicable steps to obtain from a client any information relating to his, her, or its accounts required from that client by the investigator; and

(e) pay the cost of the examination or any part of it that the inspectorate determines.

### 35 Fees and costs of investigation

(1) A practice whose accounts are examined under section 109 of the Act on the request of the relevant society must—

(a) pay the fees of the person or persons who conducted the examination and reported on it (or, if the relevant society has already paid those fees, reimburse the society for those fees); and

(b) reimburse the person or persons who conducted the examination for all costs reasonably incurred by him or her or them in conducting the examination and reporting on it.

(2) The amount of fees payable by a practice under subclause (1)(a) is determined by multiplying a remuneration rate or rates (being a rate or rates approved by the relevant society for the purposes of this subclause) by the time reasonably spent by the person or persons in conducting the examination and reporting on it).

(3) Every amount payable by a practice to the person conducting the examination and reporting on it the relevant society under this regulation is a debt due to the society by the practice, and may be recovered accordingly in any court of competent jurisdiction.

## Part 8
## Financial assurance schemes

### 36 Establishment of schemes

(1) The New Zealand Law Society may continue the scheme for the protection of money entrusted to practices known as the financial assurance scheme.

(2) The New Zealand Society of Conveyancers may establish a financial assurance scheme for the protection of money entrusted to practices.

(3) The objects of a financial assurance scheme are to—

(a) ensure that practices meet the requirements of the Act, any applicable practice rules, and these regulations in the handling of money entrusted to them; and

(b) detect cases in which practices are not complying with the requirements of the Act, any applicable practice rules, and these regulations and, in particular,—

(i) are stealing money entrusted to them; or

(ii) are behaving in a way that creates the likelihood that money entrusted to them will be lost; and

(c) discourage practices from improperly handling money or property entrusted to them; and

(d) make it evident that there is an effective scheme in place.

### 37 Implementation of schemes

(1) Each society may implement the scheme that it establishes or continue the scheme that it has established for the protection of money entrusted to practices in any manner that it considers desirable.

(2) Without limiting the generality of subclause (1), the inspectorates established by each society under regulation 24 may be responsible for administering the schemes in any manner that the relevant society directs.

### 38 Powers of inspectorates

For the purpose of administering the schemes, the inspectorates have the powers conferred on them by regulations 26 to 31.

## Part 9
## Miscellaneous provisions

### 39 Contributory mortgages

(1) If money is received by a lawyer from a client for the purposes of investment in a contributory security other than through a lawyers nominee company, the lawyer must ensure that the provisions of any applicable rules concerning lawyers nominee companies relating to the following matters are complied with as if the investment were to be made through a lawyers nominee company:

(a) the authorities to be given by investors:

(b) the information to be given to investors:

(c) registration of securities:

(d) the prohibition against the taking or holding of a security from an associated person and the disclosure required before an associated person can be a guarantor or indemnifier:

(e) default procedures:

(f) the restrictions relating to advancing moneys on the security of development mortgages.

(2) Subclause (3) applies if a lawyer is instructed to apply money under a loan agreement on behalf of a lender under that agreement, and—

(a) the lender has specified the borrower to whom the money is to be lent; and

(b) the lender has not been introduced to the borrower by the lawyer for the purpose of making that loan (other than, where the lender is a financial institution within the meaning of the Banking (Prudential Supervision) Act 1989, by means of an application for the loan); and

(c) the lawyer has not made or participated in the decision to approve the making of the loan, other than by advising in respect of the terms and conditions of the loan agreement; and

(d) the lender has acknowledged in writing that all or some of the provisions of subclause (1) of this regulation are not to apply in respect of that loan.

(3) If this subclause applies, the provisions of subclause (1), or those of them that have been specified under subclause (2)(d), do not apply in respect of the loan.

(4) Subclause (1) does not apply in respect of a security taken in the name of a single lender to secure moneys advanced by that lender.

(5) For the purposes of subclause (4), moneys held on joint account are regarded as moneys advanced by a single lender.

(6) A conveyancing practitioner may not receive money from a client for the purposes of investment in a contributory security.

Regulation 39(2)(b): amended, on 1 July 2022, by section 300(2) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

### 40 Information may be given on behalf of practice by partner or authorised employee or by director of incorporated firm

A partner or a person who is employed by a practice and who is authorised for the purpose by one of the practice's partners or by a director of an incorporated firm may, on behalf of the firm, provide any information that the practice is required to provide under these regulations.

### 41 Offences

Every person commits an offence who fails to comply with or contravenes any of regulations 4, 6 to 12, 14, 16 to 19, 21, 29 to 31, 34, and 39, and is liable on conviction to a fine not exceeding $15,000.

Regulation 41: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 42 Revocation and savings

(1) The Solicitors' Trust Account Regulations 1998 (SR 1998/17) are revoked.

(2) Despite their revocation, those regulations continue to apply as if they had not been revoked to—

(a) any investigation of any practice and any audit of any trust account for the year ending on, or any year ending before, the close of 31 March 2009; and

(b) all matters arising out of that investigation or audit or any failure to make or complete that investigation or audit.

# Schedule 1
# Trust Account Supervisor Course

rr 19, 20

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### 1 Interpretation

In this Schedule,—

**assessment day**, in relation to a candidate, means the day on which the candidate is examined or assessed on all elements of the course other than the observation report

**course administrator** means the administrator for the time being of the course, being a person appointed by the inspectorate manager

**course materials** means the current course manual, course work book, examination and assessment papers, and any other documents and information provided by the relevant society in relation to the course

**inspectorate manager** means the manager for the time being of the inspectorate.

### 2 Eligibility

The course is open only to practitioners who have registered for the course with the relevant society and paid the registration fee referred to in clause 9.

### 3 Elements of course

(1) The course consists of training and examination or assessment in each of the following elements:

(a) observation report:

(b) trust accounting:

(c) financial management:

(d) ethics (workshop):

(e) fraud (workshop):

(f) any other elements prescribed by the relevant society.

(2) To pass the course a candidate must reach the standard approved by the relevant society in each of the elements specified in subclause (1) and in each of the competencies specified in the course materials as being part of those elements.

### 4 Examinations and assessments

(1) The method, procedures, and other requirements for examination or assessment for each of the elements and competencies are as prescribed in the course materials.

(2) Where there are exceptional circumstances of disability or hardship, the course administrator may permit an alternative method of examination or assessment or alternative procedures or other requirements in respect of any candidate. The candidate must give at least 30 days' notice to the course administrator for arrangements for any such alternative to be made.

(3) No applications for aegrotat passes will be considered.

(4) A candidate may request a recount or re-mark of a written examination or assessment or reconsideration of an observation report. A request must be made in writing to the course administrator within 15 days of notification of the relevant result and must be accompanied by the fee referred to in clause 9.

### 5 Re-examination and reassessments

(1) If a candidate fails any element or competency, the candidate may apply to be re-examined or reassessed. An application must be made to the course administrator.

(2) Re-examinations and reassessments must be undertaken in accordance with procedures and other requirements, and within a period, prescribed in the course materials.

### 6 Decision of inspectorate manager is final

The decision of the inspectorate manager on examination or assessment results, or results of recounts, re-marks, reconsiderations, re-examinations, or reassessments is final.

### 7 Certificate

A certificate will be awarded by the relevant society to every candidate who successfully completes the course. The successful completion of the course by a candidate will satisfy the relevant society that the candidate has met the requirements of regulation 19(2).

### 8 Confidentiality

The relevant society will make every effort to keep confidential the names of those practitioners who have registered for the course.

### 9 Fees and refunds

(1) The relevant society may from time to time fix the registration, examination, and transfer fees (which include Goods and Services Tax) payable in relation to the course.

(2) If a candidate cancels his or her registration for the course by notice in writing received by the course administrator more than 5 working days before the assessment day, a refund of a proportion of the fees may be made to the candidate by the relevant society.

## Schedule 2
## Trust Account Supervisor Refresher Course

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### 1 Interpretation

In this Schedule,—

**course** means the Trust Account Supervisor Refresher Course referred to in regulation 19(3)

**course materials** means the current course manual, course workbook, and any other documents and information provided by the relevant society in relation to the course.

### 2 Eligibility

The course is open to practitioners who are eligible for the course and who have registered for the course with the relevant society and paid the registration fee referred to in clause 5.

### 3 Elements of course

(1) The course consists of training in each of the following elements:

(a) trust accounting:

(b) financial management:

(c) ethics:

(d) fraud:

(e) any other elements prescribed by the relevant society.

(2) To pass the course a candidate must attend the seminar on ethics and fraud for which the candidate has registered, having first studied the course materials. The relevant society may provide for candidates to attend the equivalent elements of the Trust Account Supervisor Course assessment day where numbers permit.

### 4 Confidentiality

The relevant society will make every effort to keep confidential the names of those practitioners who have registered for the course.

### 5 Fees and refunds

(1) The relevant society may from time to time fix the registration, examination, and transfer fees (which include goods and services tax) payable in relation to the course.

(2) If a candidate cancels his or her registration for the course by notice in writing received by the relevant society more than 5 working days before the assessment day, a refund of a proportion of the fees may be made to the candidate by the relevant society.

Rebecca Kitteridge,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 3 July 2008.

## Notes

### *1 General*

This is a consolidation of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### *2 Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### *3 Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### *4 Amendments incorporated in this consolidation*

Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(2)

Criminal Procedure Act 2011 (2011 No 81): section 413

New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74): section 11

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