



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

LAWYERS TRUST ACCOUNTING GUIDELINES

TABLE OF CONTENTS

1. INTRODUCTION	4
2. DEFINITIONS	4
3. TRUST ACCOUNTS	4
Errors And Overdraws	5
4. TRUST ACCOUNT RECORDS	5
Trust Account Control Account/Cash Book	5
Trust Account Ledger	6
5. TRUST ACCOUNT TRANSACTIONS - RECEIPT OF TRUST MONEY	7
Receipt Of The Trust Money In The Trust Account Receipting System	7
One Person Should Be Responsible For Receiving Trust Cash And Cheques	8
Trust Account Receipt Book Or Equivalent Records	8
Bank Deposit Supplement Book	8
Trust Money Received In The Form Of A Cheque Should Be Crossed	8
Cheques Intended For Third Parties	8
Post-Dated Cheques	9
Pay The Money Into The Trust Bank Account	9
Keep The Trust Money Separate From Other Money Until It Is Banked	9
Automatic Payments And Direct Credits	9
Transfer Of Funds Between Clients	9
6. TRUST ACCOUNT TRANSACTIONS - PAYMENTS FROM TRUST MONEY	9
You Must Have Client Authority	10
There Must Be Sufficient Funds And Certainty Of Payee	11
Responsibility For Preparing Cheques And Electronic Payments	11
Trust Account Cheques And Electronic Payments	11
Payments To Institutions	11
Payment Authorisation	11
Delegated Authority For Authorising Cheques And Electronic Payments	11
Taking Fees From Trust Money	12
7. TRUST ACCOUNT TRANSACTIONS - TRUST JOURNALS	13
8. PERSONAL TRANSACTIONS	14
9. TRUST ACCOUNT RECONCILIATIONS	14
Regular Reconciliations	14
Monthly Reconciliations	14

Unclaimed Or Unexplained Balances.....	17
10. INTEREST BEARING DEPOSIT ACCOUNTS.....	17
Bank Administration Of IBD Accounts.....	18
IBD Account Ledgers.....	18
Transfers To/From IBD Accounts.....	19
11. FOREIGN CURRENCY IN THE TRUST ACCOUNT.....	19
12. CONTROLLED BANK ACCOUNTS.....	20
13. REPORTING REQUIREMENTS.....	21
Reporting To Clients.....	21
Periodic Certificates To NZLS.....	21
Anti-money Laundering Transactions – Reporting To Police.....	21
14. VALUABLE PROPERTY.....	22
Obligation To Keep Records Of Clients’ Valuable Property.....	22
Example Register Of Valuable Property.....	23
15. INVESTMENTS UNDER SECTION 322 OF THE ACT.....	23
16. ESTATES AND TRUSTS.....	23
17. RESIDENT WITHHOLDING TAX (RWT).....	23
18. ATTORNEYS FOR SOLE PRACTITIONERS.....	24
19. INTERNAL CONTROLS.....	24
Computer System Security.....	25
System Access.....	25
Controls On Input.....	25
Controls On Output.....	25
System Back-Up And Recovery.....	25
General.....	26
20. SELECTION AND INSTALLATION OF NEW COMPUTER SYSTEMS.....	26
21. RETENTION OF TRUST ACCOUNT RECORDS.....	26
22. MISCELLANEOUS.....	27
Daily And Monthly Routines.....	27
Client Queries And Complaints.....	27
Email Scams.....	27
Retiring Or Leaving Staff.....	27
APPENDIX A - TRUST RECEIPT FORM.....	28
APPENDIX B – AML/CFT COMPLIANCE.....	29
APPENDIX C – FATCA, AEOI, CRS COMPLIANCE.....	31

1. INTRODUCTION

- 1.1 The New Zealand Law Society ('NZLS') has issued these guidelines to assist lawyers with providing a system for handling client money and valuable property, and for administering trust accounts in law practices. Although these guidelines are not mandatory, compliance with them will generally ensure compliance with the trust account provisions of the Lawyers and Conveyancers Act 2006 and the Lawyers and Conveyancers Act (Trust Account) Regulations 2008. It is recommended that you read the relevant legislation carefully and in particular, keep on hand a copy of the Regulations for ready reference in addition to these Guidelines.

You are welcome to contact the NZLS with suggestions for improving these guidelines.

- 1.2 The procedures suggested in these guidelines are designed for use by lawyers and their accounting staff. Lawyers must take care to ensure that the systems and procedures they have adopted comply. Where your trust accounting system departs from these guidelines, we recommend that you discuss this with the Inspectorate.
- 1.3 The principles of trust accounting are the same whether you use a manual or computerised system. Most practices operate computerised trust accounting systems. A manual system is appropriate only for a low volume user.

It is recommended that you take appropriate guidance from trusted senior practitioner colleagues, the Inspectorate or someone with appropriate legal accounting expertise when setting up or maintaining a trust account system.

2. DEFINITIONS

(Section 6 of the Act; Regulation 3)

- 2.1 In these guidelines, unless the context otherwise requires –
- “Act” means the Lawyers and Conveyancers Act 2006 and section references are to the Act.
 - “Regulations” means the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.
 - “RCCC” means the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
 - “FTRA” means the Financial Transactions Reporting Act 1996.
 - “AML/CFT” means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
 - “Principal” means a sole practitioner, a partner or a director of a law firm.
 - Terms defined in the Act or Regulations have the same meaning for the purposes of these guidelines.
 - NZLS is the New Zealand Law Society.

3. TRUST ACCOUNTS

(Sections 6, 110, 299 of the Act; Regulations 3, 6)

- 3.1 A trust account is defined in section 6 of the Act as meaning, in relation to a practitioner or incorporated firm, “any trust account at a bank in New Zealand that is a trust account in the name of that practitioner or incorporated firm”.
- 3.2 Trust bank accounts must be a designated “trust account”, and you must advise the bank and other interested parties in writing that the money in each trust bank account is trust money.
- 3.3 You must nominate trust bank accounts (other than Interest Bearing Deposit (IBD) accounts) by written notice to the bank that holds the accounts.
- 3.4 You must ensure that the electronic banking facility set up with your bank is the commercial version, rather than the domestic version.

- 3.5 When you have nominated your trust bank accounts to the bank under section 299 of the Act, the bank, under section 301(5) of the Act, is not entitled to charge bank fees in respect of those accounts.

Errors and overdraws

- 3.6 The trust bank account is the repository for client money. It must never be overdrawn, nor should it be at risk of being overdrawn, for example, by paying out against a client's cheque where there is a possibility of it being dishonoured.
- 3.7 Should an overdraw occur, it must be rectified promptly. Pending correction, any overdrawn balance must be lent from the practice's own funds (Regulation 6).
- 3.8 Should an overdraw occur which has been caused by the firm, and exceeds more than one working day, this overdraw must be reported in the monthly certificate as an exception.

4. TRUST ACCOUNT RECORDS

(Sections 6, 111, 112 of the Act; Regulation 11)

- 4.1 Trust account records are the records that a practice must keep in relation to its trust account. The Act and the Regulations require you to keep trust account records that are up to date, clearly showing the amount of trust money held for each client, and that are secure against retrospective alteration or deletion (Regulation 11(2)).
- 4.2 All entries in the primary records must be accurately dated, include adequate references that identify their source and destination, and enable them to be traced backward or forward, as the case may be (Regulation 11(3)).
- 4.3 The records described in this chapter are necessary to maintain a basic set of trust account records, suitable for a low volume trust account. A purpose-built software package should be used to deal with higher/larger volumes. A purpose-built software package will include most of the below records.

Trust account records include:

- Trust account receipt book (refer guidelines 5.5 to 5.6).
- Trust account cheque book (refer guidelines 6.5 to 6.7).
- Trust control account or cash book (refer guideline 4.5).
- Trust account journal (refer guidelines 7.1 to 7.6).
- Client ledger accounts (refer guidelines 4.6 to 4.11).
- Appropriate requisition forms or equivalent.
- Transaction supporting documentation for payments and journals.
- IBD client ledgers and control account.
- Bank deposit supplement book.
- Records of valuable property received and held.

The above is not intended as an exhaustive list of trust account records.

- 4.4 Unused stocks of trust account receipts, trust account cheque forms and other trust account forms should be kept in a secure place and details of holdings and usage recorded.

Trust account control account/cash book

- 4.5 The trust account control account is the link in the system between prime entries (receipts, cheque butts, payments and entries originating in bank statements), and the trust account client ledger and month-end reconciliations.

A sample format is as follows:

Control Account

Control Account (cash book)			Howard & Co				
Date	Client Name	File Ref	Payer/Payee/Narration (brief)	Trn Ref	Payment	Receipt	Balance
1/07/XX			Balance B/F				49,324.48
1/07/XX	Smith J	1296/1	ASB Bank advance	2301		127,500.00	176,824.48
1/07/XX	Smith J	1296/1	J Smith contribution	2302		24,300.00	201,124.48
1/07/XX	Brown F Est	3222/1	M Brown cash	2303		47.50	201,171.98
1/07/XX	Brown F Est	3222/1	New Motors cars	2304		37,440.59	238,612.57
1/07/XX	Johnson T	5110/4	T Johnson costs	2305		755.00	239,367.57
1/07/XX	Smith J	1296/1	Home & Partners settlement	3470	150,420.75		88,946.82
1/07/XX	Myers Trust	3564/2	Village Carpenters Ltd repairs	3471	458.00		88,488.82
1/07/XX	Smith J	1296/1	Auck City Council rates	3472	534.78		87,954.04
2/07/XX	Jenkins R	7888/10	R Jenkins fees	2306		75.00	88,029.04
2/07/XX	Kelly H	3225/2	IRD tax	3473	1,544.27		86,484.77
3/07/XX	Evans G	5478/3	G Evans fees	2307		39.95	86,524.72
3/07/XX	Jones H	4589/1	First National bal deposit	2308		12,300.00	98,824.72
3/07/XX	Brown F Est	3222/1	AMEX bal	30718	15,633.95		83,190.77
4/07/XX	Robinson A	1258/8	A Robinson bal funds	3464	60.00		83,130.77
4/07/XX	Smythe J	4587/2	J Smythe bal funds	40718	100.00		83,030.77
4/07/XX	Grills P	7894/5	Reversed item	2295	3,842.75		79,188.02
28/07/XX	Brown F Est	3222/1	Downtown Auctions furniture	2399		750.00	79,938.02
28/07/XX	Meyers Trust	3564/2	S Read rent	2400		1,090.00	81,028.02
28/07/XX	Kelly H	3225/2	K Lyall interest	2401		260.00	81,288.02
28/07/XX	Smith M Est	1234/5	Cheque cancelled	3244		3,756.43	85,044.45
					172,594.50	208,314.47	

Notes:

- All transactions should have a unique reference and brief but meaningful narration.
- When a cheque is cancelled after recording, it should be reversed by recording it in the receipts column of the control account and in the client ledger account as a credit.
- If a cheque is dishonoured, the unpaid receipt should be recorded in the payments column of the control account and debited to the client's ledger account.

Trust account ledger

- 4.6 The function of the trust account ledger is to record the entitlement of each client to the funds held in the trust bank account. The ledger may contain one or more accounts (commonly known as projects/matters) for each client, recording every movement of money into or from the funds of that client and the resulting balance available. It is critical to keep the trust account ledger accurate.
- 4.7 The trust account ledgers in their simplest form may be a set of ruled cards (or pages in a book) as shown below. The cards are kept together, usually in alphabetical order of client name. Inactive cards are kept in a separate section, also alphabetically. Where a client or groups of clients comprise varying individual interests, the practice must ensure that the money relating to each individual interest is separately accounted for. For example, if a practice acts for a developer client and receives a number of deposits from purchasers, these monies will be receipted to the developer client ledger but recorded under that ledger in separate projects. Most trust account computer systems provide for this. For example:
- Single client, single retainer = single ledger (aka matter)
 - Single client, multiple retainers = single matter multiple projects
 - Multiple clients, single retainer = single matter multiple clients

- Computerised systems provide for trust account records for each 'matter'; a manual system will have a card for each matter.
- 4.8 Entries to the client ledger are made simultaneously to those entered in the control account/cash book. The details entered contain the same references as entered in the control account/cash book i.e. receipt and payment number (this is cross-referencing). The client ledger should contain a more detailed narration which would begin with the payer/payee name plus a full explanation of what the funds were received or paid out for. The narrative should be of sufficient detail to be used when reporting to the client. Payments are debits, and receipts are credits. As each entry is made, the resulting balance of the client's funds is entered in the right-hand 'Balance' column.
- 4.9 All entries in the trust account ledger, and in other accounting records that are the source of such entries, must be accurately dated. They must include cross-references that identify their source or destination to enable each entry to be traced backward or forward as the case may be.
- 4.10 A sample format is as follows:

Trust Ledger

Howard & Co					
Client/Matter: 1296/1					
Client: J Smith		Re: Purchase 5 Clover Ave		Card No. 1	
Date	Transaction Details	Ref	Debit (out)	Credit (in)	Balance
1/07/XX	ASB Bank mortgage advance	2301*		127,500.00	127,500.00
1/07/XX	J Smith cash contribution	2302*		24,300.00	151,800.00
1/07/XX	Horne & Partners settlement purchase 5 Clover Ave	3470**	150,420.75		1,379.25
1/07/XX	Auck City Council rates and water rates	3472**	534.78		844.47
3/07/XX	Howard & Co fees & disb BOC 78 1/7/XX	J27***	820.00		24.47

* = Receipt No.

** = Payment No.

*** = Journal No.

- 4.11 When all entries are made and the balances correctly calculated, the total of the list of client balances should be the same as the control account/cash book balance.

5. TRUST ACCOUNT TRANSACTIONS – RECEIPT OF TRUST MONEY

(Sections 110 to 112 of the Act; Regulation 12; refer also guidelines 8.6 to 8.9 on money laundering)

- 5.1 When you receive trust money, the following steps should ensure that you comply with the Act and Regulations.

Receipt of the trust money in the trust account receipting system

- 5.2 When trust money is received, it must be entered in the trust receipting system. This will be the receipt book for a manual system. Computerised systems often gather the required detail via completion of a manual or electronic receipt requisition form.

Funds are normally received via deposits made directly to the trust bank account. These deposits need to be identified promptly and entered into the trust receipting system. Bank statements should be downloaded daily to enable timely receipting of such deposits.

Some deposits are made to the trust bank account by a payer who omits to detail their identity or reference (matter) number; so, it is unclear which client is to be credited for the receipt. These monies

can be treated as an adjusting item i.e. monies received but unable to be receipted (outstanding lodgement), or they can be credited to a suspense or clearing ledger. Posting unknown deposits to a suspense account takes the unknown lodgement out of the reconciliation and it is easy to forget to follow through on. For this reason, a copy of the ledger card should form part of the reconciliation supporting documentation each month even if the account has a nil balance. Where there is more than one outstanding deposit, the ledger should be reconciled each month, so that it is apparent what the balance consists of. The bank should be contacted to determine if they are able to provide any further details regarding the unidentified deposit. Where the payee cannot be identified after a period of time, the monies should be paid to the Inland Revenue as unclaimed monies (refer guidelines 9.7 to 9.9).

One person should be responsible for receiving trust cash and cheques

- 5.3 For proper accountability, one person should be responsible for receiving and recording trust money, and should have custody of that money. This should include appropriately secure facilities, up to the point when it is handed over for banking. Where possible, the person responsible for receipting trust monies should not also be responsible for trust account payments.

- 5.4 Receipts must be completed even where the payer does not request a receipt. If using a manual receipt book, the top copy receipts should remain in the book if not issued. The receipt must always be issued (provided to the payer) when the money is received in cash or the payer requests it.

Cash should always be counted in the presence of the payer at the time it is received so there is no doubt as to the amount received. Best practice would be to require two staff members to be present while this occurs and for both the staff and client to sign the receipt to confirm the balance.

The receipts must record complete information about the parties involved and on the nature of the payment as indicated by the layout of the form. Receipts must follow a prescribed format (Regulation 13). The receipt writer should ensure that she/he has sufficient information to complete the receipt form fully.

If operating a suspense account for unidentified monies, on the day the recipient is identified the original receipt should be cancelled and a new receipt issued in the payer name. The narration on the new receipt should include the date on which the monies were originally received. Journaling the funds to the recipient's ledger would prevent a receipt being produced if requested.

Trust account receipt book or equivalent records

- 5.5 Trust account receipt books must be obtained from a supplier approved by the NZLS. Their design includes the name of the practice on the receipt form, provision for all the required information as to date, amount, purpose and parties, and a permanent copy to remain in the book, or system if electronic (Regulation 13 and Appendix A).
- 5.6 Trust receipt records should provide a reliable and tamper-proof numerical sequence of entries to ensure that no receipts can be "lost" from the sequence. Money received must be recorded in the receipt book promptly. Receipting has an important role in providing a complete, accurate and secure record of money received. Any recording system must therefore be of a high standard and the entries not capable of alteration or deletion.

Bank deposit supplement book

- 5.7 The bank deposit supplement book keeps a detailed record of the composition of each banking. This is necessary only where deposits are comprised of multiple receipts; this is now relatively uncommon.

Trust money received in the form of a cheque should be crossed

- 5.8 If you receive trust money in the form of a cheque that is not crossed, you should cross the cheque with a stamp that states "Not Transferable". The cheque is then payable only to your practice's trust bank account.

Cheques intended for third parties

- 5.9 You may receive cheques that the client has directed you to pass on to a third party such as Inland Revenue. Such cheques will usually be made out to the third party. In these cases, you should make

entries in your valuable property records or a formal file note, recording full details of the cheque, the date on which it was received, and details of the disposal of the cheque including the date on which, and the person to whom, the cheque was disposed of. Computerised systems generally provide a facility termed “transit cheque” to record details to the client’s matter.

Post-dated cheques

- 5.10 Post-dated cheques for the trust bank account should be recorded as they arrive in your valuable property records or a suitable record.

Pay the money into the trust bank account

- 5.11 You must pay all trust money that you receive into your trust bank account. Trust money should be banked promptly, daily where practicable.

Keep the trust money separate from other money until it is banked

- 5.12 Trust money received must be held separately from other money until banked and must not be used as a means of cashing other cheques.

Automatic payments and direct credits

- 5.13 Where you arrange for trust money to be paid to you by way of automatic payment, direct credit or other electronic means, you should ensure that the payer is provided with full and correct details of the trust bank account to be credited, the purpose of the payment etc, as appears in the trust bank account statement. Be aware automatic payments can be difficult to stop if a final payment date is not entered.
- 5.14 You do not have to send a receipt to the payer unless you are requested by the payer to do so, as the record in the trust bank account statement should be sufficient.
- 5.15 Funds received by electronic transfer via one of the main trading banks are now considered to be cleared funds when received. You should be aware however that banks can reverse funds received via direct debits from a client’s account, and still exercise due care in making any payment in respect of trust money received electronically. You may wish to check with your bank or arrange access to real-time online statements. The NZLS Property Law Section provides guidance regarding clearance times.

Transfer of funds between clients

- 5.16 Funds transferred in transactions between clients must be traceable. Where money is received from a client, for transfer to the account of another client, the money should first be credited to the payer client’s account before being transferred to the other client’s account. Transfers between clients must be recorded via a journal entry (Regulation 12(6)). Evidence of authority to transfer funds must be obtained/held before the transfer is made.

6. TRUST ACCOUNT TRANSACTIONS – PAYMENTS FROM TRUST MONEY

(Section 110(1)(b) of the Act; Regulation 12)

Most trust account payments are made via electronic banking. It is important that the electronic banking system is secure and appropriate documented processes are put in place.

- 6.1 ‘Electronic banking’ requires security measures. An electronic banking system for trust money should incorporate adequate safeguards in its design such as:
- Transfer of funds from the trust account should require the involvement of two individuals. One individual sets up the transaction and another individual authorises it. These systems have their own bank-developed release processes and these should be dovetailed with your own payment authority structures.
 - The fact that all individuals have a duty to preserve the secrecy of their passwords.

- The ability to check payee bank account details against documentary evidence such as a bank statement, a printed bank deposit slip, an ATM printout or equivalent.
- A process should be put in place as to when and how payee bank account numbers are obtained. It is recommended that clients are asked to provide quality (documentary) evidence of bank account numbers early in the retainer, ideally in person (if practicable). A copy of a bank statement or an ATM printout are an easy way of securing such evidence. Clients may also be able to provide their account numbers via their mobile app, or by requesting their bank to provide the details directly. The NZLS does not recommend solely taking bank account numbers verbally as this may lead to transposition errors, identity issues and/or subsequent dispute.
- Sophisticated, transaction-based, email scams are prevalent. Where possible, bank account numbers should be obtained when a retainer is commenced or shortly after. Where payee bank accounts are obtained via email it is recommended that you phone and confirm the number with the client.
- The ability to store payee details, particularly for regular payments.
- Where payee bank account numbers are held electronically, the ability to report changes made. The report should show the old and new bank account numbers and the date and individual that made the change. The report should be reviewed each month.
- Ensure full supporting documentation for both the payment being made and the payee bank account number is provided to the individual authorising the payment. Documenting what is required sets expectations. When the transaction is authorised, the bank provides a final/processed confirmation on screen. The confirmation is a primary record for the payment transaction. It will be uniquely numbered and records the payee bank account the funds were transferred to, and the individual who authorised the transfer. Banks maintain these records on line for only some months, hence it is important that they are printed or saved electronically by the practice.
- Electronic fund transfers require a sequential unique reference. This could be the bank's transaction number or you can manually reference the transactions i.e. date plus transaction number 1109171, 1109172, etc. Other precautions are as recommended by the bank supplying the service.
- The Inspectorate reviews payments, and practices will need to be able to retrieve evidence of both payee bank account numbers, and completed/final bank batch/confirmation reports, showing the recipient bank account numbers and the author who approved the payment.

You must have client authority

- 6.2 You must have authority before you make any payment from a client's trust money. This can be contained in the client's acceptance of the letter of engagement. Preferably, you should obtain and hold on file written authority from the client for any payment or the series of payments.

Where you act on instructions other than written (e.g. verbal), a file note must be recorded to ensure compliance with Regulation 12(6)(b). It is also recommended that a letter or email be sent to the client confirming the payment. If the client instruction is not inherent in other documentation, there should be reference to the client authority as the final part of the transaction narration.

Situations where express client authority is not required include:

- where the payment is to the client; or
- where the transfer is to the client's interest bearing deposit account; or
- where the authority is inherent in other documents (such as a will or agreement for the purchase of a property).

Any standing authorities should be held on a permanent file where they will be accessible.

Authorities relating to individual payments should be numbered in accordance with the entries they support and filed in date order along with any other supporting documentation.

The Inspectorate commonly samples payments in its reviews and practices need to be able to prove payments back to underlying authorities. Consideration should be given to such retrievals when

setting up your filing of payment requisitions, and the underlying authorities (Regulation 11(1)). It is preferable to maintain separate accounting files which contain everything presented to the individual authorising the payment.

There must be sufficient funds and certainty of payee

- 6.3 You must not make transfers or payments from a client's trust money unless the client's ledger account has sufficient cleared funds, and the funds are available for that purpose.

Responsibility for preparing cheques and electronic payments

- 6.4 If possible, only **one person** and a back-up should be responsible for preparing electronic payments and trust account cheques (preferably not the same person as responsible for receipting).

Trust account cheques and electronic payments

- 6.5 The only methods of making payments from the trust account are by electronic banking transfer or by cheque. Monies on interest bearing deposit must be withdrawn and credited to the trust account before payment can be made.

In rare instances a client may require cash e.g. an overseas client visiting New Zealand without a New Zealand bank account. In such extraordinary circumstances, a formal file note should be completed. A trust cheque can be opened to pay cash and the crossing deleted. If doing this the practice should obtain the cash by presenting the cheque at the bank. The cash is counted by the client, in front of two members of the practice, and a receipt (acknowledgement) must be obtained from the client (the practice will need to compile a suitable receipt form). Cash cannot be paid to a third party.

- 6.6 Each payment transaction narration must include the date, payee, account debited, amount and a complete narrative as to its purpose. That information should be recorded by the following methods (where applicable):
- Entered in the client ledger.
 - Included in sequentially filed electronic payment reports.
 - Written on the cheque butts.
 - By way of an authorised payment requisition (prepared before the payment is prepared) that contains the required information.

- 6.7 Every payment must be drawn in a way that permits the crediting of money only to the account of the intended payee. For electronic payments, the payee account details must be checked before the payment is sent. For cheques, these should be printed "not transferable" or equivalent crossing, and without the words "or order" or "or bearer".

Payments to institutions

- 6.8 Where a trust account cheque is paid to an organisation on behalf of a client, that cheque should specify the name of the client. For example, it should be payable to:

"[Name of institution] for credit of [name of client]"

When paying an institution electronically, use should be made of the reference field to provide the recipient with as much detail as possible of the party paying the monies. Most institutions will provide guidance as to the reference numbers to be provided.

Payment authorisation

- 6.9 The person preparing a payment or batch should ensure that the authoriser has sufficient information and supporting evidence in respect of the payment to be satisfied that it has been properly set up.

Delegated authority for authorising cheques and electronic payments

- 6.10 It is recommended that whenever possible a principal or director of the practice sign/approve trust account cheques or electronic payments, because the very act of doing so represents an important

part of the control of the trust account.

6.11 Where a practice gives employees such authority:

- Authority should be given only to suitably knowledgeable and experienced employees and for use only in urgent cases where a principal or director is not available. Such authority should be supported by procedures to ensure that payments released are true and correct.
- Wherever possible another appropriate person should counter-sign. Provision for such joint signatories would need to be made in the establishment of the bank mandate. For example, a staff lawyer might have authority jointly with the practice manager.
- In the case of a sole practice, the attorney appointed under section 44/Schedule 1 of the Act may be considered as the preferred alternative.

Procedures should include a detailed scrutiny of the payments made under such delegated authority and the related transactions immediately upon the principal's return to duties.

6.12 Practices should be aware that any such delegated authority has an element of risk, and that the risk remains the responsibility of the principals or directors who must always take steps to minimise it. This might include an extension to the professional indemnity insurance policy to cover employee dishonesty.

Taking fees from trust money

6.13 You are not permitted to deduct fees from a client's trust money unless you have provided that client with an account for the services carried out (Regulation 9(1)) and the client has authorised the deduction (Section 110).

6.14 You must, prior to commencing work for a client, provide that client with information in writing or in acceptable electronic form (RCCC 1.7) on the principal aspects of client service including the basis on which the fees will be charged, when payment of fees is to be made and whether the fee may be deducted from funds held in trust for the client (RCCC 3.4(a)).

6.15 A practice may secure an authority to take fees by deduction through their client care and service (engagement) materials. For an authority conferment clause (to take your fees by deduction) to be sustainable, for example if challenged, it should be explicit. The greater the degree of client acceptance the more reliable the authority. The recommended wording is found in the Law Society template on the website:

<https://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/client-care>

It should be noted that fees taken by deduction are frequently a feature of complaints. It is recommended all fees of substantial quantum or that might be contentious are communicated to clients, and explicit and positive acceptance is received before the fees are taken by deduction.

6.16 You may receive funds to cover fees in advance only on the basis that these are held for the client's account in your trust account. No deduction in respect of fees may be made from funds held unless the work has been performed, the client gives an authority for the deduction and an account has been provided to the client for the fees that are to be deducted (Regulation 10, RCCC 9.3).

6.17 There are two common methods of transferring money from a client's trust ledger account in payment of an invoice:

- by way of journal entry debiting the invoice to the client's trust account and crediting the practice's firm's interest in trust (float) account in the trust account ledger; or
- the amount of the invoice can be paid into the practice bank account by trust account cheque or electronic payment debited to the client ledger.

In many instances, a practice may require payment of its fees directly to its practice bank account. This is permissible if there is no trust element to the payment.

6.18 Copies of invoices and trust account statements to clients should be kept in a central file or the digital equivalent. The file may be ordered alphabetically by client, or by invoice number/date order with the relevant trust account statements attached. A further copy can be placed on the relevant client's

file. Invoices should be sequentially numbered and cross-referenced to the ledger entries. In most electronic systems, this requirement can be met by running a report from the system (Regulation 9).

- 6.19 Where disbursements are included in an invoice or trust account statement to a client, the disbursements must reflect only actual payments by the practice to a third party and must not include any undisclosed fee charged by the practice. Agency fees can be charged only where there is a true agency and the agency has commercial substance.

It is difficult to record specific office overheads, such as telephone and tolls or photocopying, at cost to the practice. If a practice wishes to recoup some office overheads the recommended means of such recovery is to include an office service charge, recorded as a fee and not a disbursement. Such charges need to be disclosed and explained within the practice's client care information and cannot be included as a disbursement within the client invoice.

7. TRUST ACCOUNT TRANSACTIONS - TRUST JOURNALS

- 7.1 The accounting system used by the practice must be able to produce or retain a record of journals completed. This could be a journal book (commonly used in a manual system) or a report (commonly found in an electronic accounting system).
- 7.2 A trust account journal is used to record transactions of the following type:
- Transfer of funds between two clients.
 - Transfer of funds between two accounts of one client.
 - Transfer of fees from the client's account to the practice's account in the trust ledger (electronic systems normally automatically generate these transactions).
- 7.3 The trust account journals can be kept in a journal book that can be purchased from any stationer or on requisition forms. In either case, the following information must be recorded:
- Date.
 - Unique reference number (each journal entry must be numbered consecutively for cross-referencing purposes).
 - The name of each ledger account debited and credited.
 - The ledger account numbers.
 - Amount.
 - An informative narration with sufficient detail to make the purpose of the transfer evident. Where the journal transfers funds between different clients, the narration should reference the underlying authority for the transfer.
- 7.4 Journal entries can remove from or add to client entitlement to trust funds. For this reason, internal controls should ensure that only authorised journal entries are posted to the trust account ledger. The Trust Account Supervisor should periodically review a record of journals after they are completed, at the least when preparing the monthly trust account certificate, but preferably more frequently to enable any errors to be identified as soon as possible.
- 7.5 Journal entries should be sequentially numbered, signed by the appropriate person to approve them and filed for easy reference. The Inspectorate commonly samples journals in its reviews and practices need to be able to relate journals back to underlying client authorities. Consideration should be given to such retrievals when setting up your filing of journal requisitions, and the underlying authorities.
- 7.6 A sample format of a journal is as follows:

Trust Account Journal

Trust Account Journal					
Date	File Ref	Transaction Detail	Trn Ref	Debit (out)	Credit (in)
03/07/XX	1296/1	J Smith	27	820.00	
	0001/01	Firm's Interest in Trust (FIT) (Trf BOC 78 3/7/XX re pch)	27		820.00
04/07/XX	1478/1	P & R Groves	28	127,500.00	
	1479/1	R Groves (Settlement 56 Idle Way as per Deed dated 30/6/XX)	28		127,500.00

8. PERSONAL TRANSACTIONS

Regulation 8 prohibits the use of the trust account for your (or your families' or employees') personal transactions. The exception is in property or investment transactions, which are dealt with as if for a client i.e. a file should be set up, client care information provided and appropriate transaction authorities retained.

9. TRUST ACCOUNT RECONCILIATIONS

(Regulation 14)

Regular reconciliations

9.1 You must reconcile the trust account records regularly, as follows:

- Ensure that your receipt and payment records are up to date.
- Post the entries from the prime records (receipts, cheque butts, electronic payment records and journals) to the client ledgers. Update the ledgers and calculate the day-end balance for any ledger accounts with new entries.
- Investigate and act on any debit balances or other anomalies.
- Compare the total ledger balances and the control account/cash book totals, then compare those to the bank balance and identify any difference.

It is preferable to reconcile the trust account daily. It is preferable that this task is separated from the accounts payable person where possible.

Computerised systems generally provide for daily reconciliations. It is also a relatively simple task to reconcile manual systems daily, as most transactions are real time (i.e. electronic) and in many instances the control account/cash book will equal the bank account balance. If there are delayed items, e.g. un-presented cheques or outstanding lodgements, these would need to be allowed for. Daily reconciliations should be reviewed by someone other than the person producing the reconciliation. It is good practice to provide each supervisor with a copy of the day's transactions for the authors they supervise.

9.2 Entries in the prime records should be made promptly and be in strict chronological order. Where there is an error in a manual system, you should neatly cross out the entry and write the correct version next to it. Each entry should be visible and you should avoid using correctional fluid or tape.

Monthly reconciliations

9.3 You must reconcile each trust account at the end of every month (Regulation 17). The most essential function of a reconciliation is to check that there are sufficient funds in the trust bank account to meet the clients' ledger balances, and that those clients' ledger balances correctly reflect their entitlements.

The reconciliation must show clearly the outstanding items causing differences between the trust bank account balance shown in your records (i.e. cash book or control account) and the corresponding balance shown by the bank statement.

Monthly reconciliations should be retained in total to form a permanent record, i.e. work papers to evidence the reconciliation. Other records that should be produced and retained in support of the reconciliations include:

- Control account/Cash book summary (opening balance, plus receipts, less payments = closing balance).
- Bank reconciliation
- Copy of month-end trust account bank statement.
- Unpresented cheques list detailing for each cheque number the date drawn, payee and value.
- Details of other reconciling items, e.g. unbanked receipts.
- List of client balances (credits must in total equal the cash book summary closing balance).
- It is also recommended for computerised systems that separate transaction reports be run for receipts, payments and journals. The totals of the receipt and payment reports should agree with the figures contained in the control account/cash book summary. The reports will highlight errors/reversals and the reports should be reviewed for unusual transactions.
- If operating a suspense account, a copy of the ledger, reconciled to the month end balance.
- A dormant balance listing of balances which have not moved for 3 months (see guideline 9.9).

If a manual system is operated, it is recommended that each monthly reconciliation (and the ledgers) are scanned to form a permanent record. This also ensures that the practice has a backup should there be a loss of the hard copy/paper records.

- 9.4 You must complete all monthly reconciliations except for the December reconciliation by the 10th working day of the following month. The December reconciliation must be completed by the 15th working day in January. NB: Reconciliations are required for all bank accounts including foreign exchange, call and term deposit accounts. Refer to the 'Interest Bearing Deposit Accounts' section.
- 9.5 A suggested monthly reconciliation procedure for a manual accounting system is as follows:
- Obtain the final trust bank account statement/s to the month-end. These would include any foreign currency trust accounts (if applicable). Write up any entries originating in the final bank statement to the control account/cash book and post the entries to the client's ledger, to the last day of the month (and no further).
 - Ensure all journal entries for the month have been fully processed.
 - If operating a suspense account for unknown electronic deposits, the account should be reviewed and reconciled where necessary.
 - Prepare a list of client balances in the ledger at month end and ensure that total corresponds with the month-end control account/cash book balance.
 - Check all entries in the bank statements to the corresponding records in your control account/cash book, ticking both records in the process and note any apparent errors for correction.
 - Ascertain and list the outstanding items in the control account/cash book or the bank statements (see previous bullet point) and any brought forward from the previous month's bank reconciliation. For example, a cheque drawn in July but not presented by 31 July, or a deposit on 31 July credited by the bank on 1 August, will be outstanding items and will feature in the bank reconciliation at 31 July.
 - Total the payments and receipt columns of your control account/cash book for the month.
 - Prepare a control account/cash book reconciliation for the month (opening balance + total receipts - payments = closing balance).

- Prepare the bank reconciliation. Ensure that the bank reconciliation agrees with the control account/cash book balance.
- If the control account/cash book disagrees with either the bank reconciliation or the ledger total, recheck that record first. Note the amount of the discrepancy as this may be the amount to look for. Sometimes a figure may have been entered on the wrong side of the ledger resulting in a discrepancy of half or double the amount you are looking for.

9.6 A sample month-end bank reconciliation is as follows:

Sample bank reconciliation as at 31 July 20XX

Howard & Co		
Control Account Summary Reconciliation (or "Cash Book")		
Opening Balance as at 01/07/20XX		\$49,324.48
Receipts as per control account (cash book) totals for month		208,314.47
		257,638.95
Payments as per control account (cash book) totals for month		172,594.50
Closing Balance as at 31/07/20XX		\$85,044.45

Bank Reconciliation		
Balance as per bank statement as at 31/07/20XX		\$83,129.45
Add deposits not banked:		
Receipt 512401 banked 01/08/20XX		2,100.00
		85,229.45
Less unrepresented cheques:		
303345 Justice Department 27/04/20XX	25.00	
303532 D Dalgety 31/07/20XX	60.00	
303533 RFD Limited 31/07/20XX	100.00	185.00
Adjusted bank balance as at 31/07/20XX		\$85,044.45

Client Ledger Balances as at 31/07/20XX	Last Activity	\$
4785/10 P L Smith	01/01/20XX	1,500.00
3222/1 Est F Brown	31/07/20XX	85.00
3692/2 B G Green	01/10/20XX	125.00
2525/1 H Jones	18/05/20XX	55,000.00
8887/1 Dr E Who	13/07/20XX	15,000.00
5423/3 Y Yan	19/07/20XX	2,233.00
2525/8 S E Zu	29/04/20XX	2,550.00
0001/1 Firms Interest	31/07/20XX	8,551.45
		\$85,044.45

The 'Date of last activity' field is supplied in most software packages but needs to be added in a manual system. This prompts attention to any inactive residual balances or those that might require reporting (Regulation 12(7)). The client ledger listing should be checked for any monies that might need to be placed on IBD (see guidelines 10.2 and 10.3). If a 'Date of last activity' field is not added, then the practice needs to have some suitable alternative mechanism. Lists of such inactive balances can be produced by reports in most software packages, occasionally described as a 'Dormant/Stale Balance Report'.

End of month reconciliations completed by sole practitioner practices should be such that they are readily accessible and understandable by s44 attorneys if required.

Unclaimed or unexplained balances

- 9.7 Unless otherwise directed, you have a duty to pay to the client any balance of money held after the task for which it was held has been completed. The procedure for reporting to the client and closing the file will normally include paying out any balance (Section 110(1)(b) of the Act; Regulation 12(7)). Part of the rationale for regular reporting as required by Regulation 12(7) is that the client is reminded of the monies and instructions remain or are refreshed. In some instances, a client can move address (or change email address) and through no fault of your own you lose contact with your client.

If that occurs, you should make every possible endeavour to locate them. You will need to meet the costs of such efforts.

- 9.8 Where an unexplained balance remains, it may be due to disbursements allowed for but not yet paid, or an estimation difference in costs or disbursements. Its origin should be identified and paid to the client as appropriate. Such monies can be taken by deduction only if the client authorises and an invoice is rendered as discussed above (Section 110; Regulation 9). If the balance is minimal, the NZLS recommends that it is paid to the client electronically rather than by cheque. In most instances, the practice will have a record of the client's payee bank account number. An email advice of the residual payment should satisfy the requirement to report.

- 9.9 A practice should regularly review long standing balances, question the reasons for ongoing retention and ensure that reporting is being completed. Where you cannot find a person on whose behalf you are holding trust money, and you do not have authority to pay the money to any other person, you may follow the procedure set out in Section 337(2) - (4) of the Act (Payment to Inland Revenue). Remaining money for a company may be forwarded to Unclaimed Monies, The Public Trust CSC Accounting, PO Box 31543, Lower Hutt, 5010. The Public Trust is to be notified of the company details and a statement that the funds are to be credited to the Liquidation Surplus Account under Section 324 of the Companies Act 1993.

The NZLS recommends that any trust account balance left over is dealt with promptly so as to avoid such situations.

10. INTEREST BEARING DEPOSIT ACCOUNTS

(Section 114 of the Act)

- 10.1 IBD records required are client IBD ledgers and control accounts for each bank account operated. Term deposits should also have a separate control account. At month end, and every quarter for the IBD, a person other than the one completing the reconciliations (if possible) should confirm the name, total values and interest allocation between the bank-provided information and the trust client ledger.
- 10.2 It is your duty to ensure that trust money earns interest for the benefit of the client concerned if practicable, unless the client instructs otherwise (section 114). When you receive trust money, you must therefore decide whether it should be deposited in an Interest Bearing Deposit Account ('IBD Account').
- 10.3 Where the amount of interest likely to be earned is minimal compared with the administrative cost, you may decide that it is not reasonable or is impracticable to deposit the trust money in an IBD Account.
- 10.4 Where practicable, all IBD bank accounts should be associated with your nominated trust bank accounts. Care should be taken where this is not the case.
- 10.5 Client monies held by a practice within its nominated trust account or associated IBD account (either call or fixed term) are usually covered by the Lawyers' Fidelity Fund. Where a client gives specific or discretionary instruction for funds to be invested elsewhere, the funds are not covered by the Lawyers' Fidelity Fund. Refer to discussion in guideline 15.1 re exclusion of other investments and Section 322 of the Act.

- 10.6 A building society is not a bank (see definition in Section 6 of the Act) and therefore maintaining building society accounts for client money is in breach of Section 110(1)(a) of the Act. To make use of a building society for clients' interest bearing deposits, practices must first have authorities from clients and have made the disclosure required by RCCC 3.4(c) as to exclusion from Lawyers' Fidelity Fund cover.

Bank Administration of IBD Accounts

- 10.7 Each client must have its own separate IBD Account. The bank records must show that there are separate client accounts, grouped so that all the IBD Accounts are within the control and responsibility of the practice.
- 10.8 The Banks and Inland Revenue have a variety of information requirements around getting to know your client (KYC), FATCA (United States Foreign Account Tax Compliance Act), AML/CFT (Anti-Money Laundering and Countering Financing of Terrorism), AEOI (Automatic Exchange of Information) and CRS (Common Reporting Standard). Therefore, consideration needs to be given to receiving all required detail from your clients prior to placing the monies on IBD.
- 10.9 The banks' facilities provide for:
- Interest to be compounded or paid to a nominated trust account each month/quarter. It is recommended that practices choose the option to compound interest as this will save both time and multiple trust account entries, as well as additional internal controls.
 - Resident Withholding Tax (RWT) can be set for either the practitioner or the bank to be responsible. It is recommended that the bank be responsible. When the bank sends you Resident Withholding Tax certificates, you must send them on to the relevant clients for action by them in respect of their tax returns.
 - Most banks provide a facility to deduct your commission and, by arrangement, will credit it directly to your office account at the end of each month.
 - Deposits and withdrawals are usually affected by electronic transfer.
 - The bank credits each IBD Account with interest as it accrues.
 - At the month end, the bank produces (or you can download) a list of bulk deposit balances. The list includes other information such as interest credited or accrued that month.
 - On 31 March each year, the bank will issue Resident Withholding Tax Certificates. These certificates must be forwarded by the practitioner to the client.
 - Most banks provide annual client reports which either need to be requested or may be printable directly from your on-line banking.

IBD Account Ledgers

- 10.10 You must open a separate section of ledger cards or computer equivalent to record clients' funds held in IBD accounts. The trust account ledger should include a control account that mirrors the total value of the IBD account. The IBD account ledger provides a record of all trust money held in IBD Accounts for clients. The ledger must be reconciled with the month end information from the bank.
- 10.11 Where funds are held on both call and term deposit on behalf of clients, you should maintain separate ledgers for each, i.e. separate control accounts and client ledgers.
- 10.12 You should make entries to the control account and client ledger accounts simultaneously (see below).
- 10.13 The IBD ledger must be reconciled at the end of each month in a similar manner to the trust account. The month end information from the bank should periodically be compared to the practice's records as to client names and value of investment. This should be done for both on call and term deposit balances.

Example Interest Bearing Deposit Control Account

IBD Control Account		Howard & Co					
Date	Client Name	File Ref	Tran. Ref	Deposit/Interest/Withdrawal	Withdrawal	Deposit	Balance
01/06/20XX				Opening balance			\$747,385.49
05/06/20XX	R L Howarth	4789/1	EFT145687	Deposit		75,400.00	822,785.49
05/06/20XX	B R Jones	5123/3	EFT145687	Deposit		42,000.00	864,785.49
08/06/20XX	R L Howarth	4789/1	EFT1478	Final withdrawal	75,432.97	32.97	789,385.49
17/06/20XX	B R Jones	5123/3	EFT1546	Withdrawal	5,000.00		784,385.49
30/06/20XX	Various			Net interest compounded as per bank schedule		7,843.46	\$792,228.95
					80,432.97	125,276.43	

Example Interest Bearing Deposit Client Ledger

Howard & Co					
Client/Matter: 4789/1					
Client: R L Howarth		Re: Purchase 1 Simlar Tce		Card No. 1	
Date	Transaction Details	Ref	Debit (out)	Credit (in)	Balance
05/06/20XX	Deposit	EFT145687		75,400.00	75,400.00
08/06/20XX	Withdrawal and final net interest	EFT1478	75,432.97	32.97	0.00

Notes:

- Transactions are recorded in the IBD control account and the balance will correspond with the bank statement for the IBD account.
- Every entry on the IBD control account will be posted to the respective client's IBD ledger account.
- On final withdrawal for an individual client, the net interest added by the bank to the final withdrawal will also be recorded as a deposit.
- Monthly/quarterly net interest compounded by the bank must also be added to the individual IBD client ledger account as per the bank schedule, and the total recorded as a deposit in the IBD control account.

Transfers to/from IBD Accounts

- 10.14 Deposits and withdrawals are usually made electronically. There must be an instruction to the bank that withdrawals are to be credited only to the trust bank account. This is usually achieved when the facility is first established.
- 10.15 Withdrawals should be recorded in the receipt book (or equivalent record – refer guidelines 5.5 – 5.6) similarly to a direct credit. One receipt for bulk withdrawal will suffice, with a copy of the schedule attached to it for posting purposes.
- 10.16 Care needs to be taken when making payments from the trust account that required monies have been transferred from IBD. The failure to complete such transfers is a common occurrence reported in trust account certificates.
- 10.17 Care also needs to be taken to ensure that interest associated with a final withdrawal is posted and included when paying out the final trust balance. It is not uncommon to find dormant balances are the result of missing the final interest when paying the trust balance to the client.

11. FOREIGN CURRENCY IN THE TRUST ACCOUNT

- 11.1 Banks in New Zealand can open a foreign currency account at a branch in New Zealand. Section 110(1)(a) of the Act requires client money to be “paid into a bank in New Zealand to a general or separate trust account” (of the practice).

- 11.2 It is therefore possible for a practice to set up a foreign currency trust account to receive (say) Japanese yen and retain the funds in that currency on instructions from the client.
- 11.3 The key points to observe are:
- Each foreign currency trust account must be part of the general designated trust bank account arrangements at a bank in New Zealand, unless opened as a client bank account (refer guideline 10.1). Therefore, a separate trust account will be opened for each currency held, and a separate ledger opened for each client with money in such an account.
 - Bank statements must be obtained for each foreign currency trust bank account and be retained in the trust account records.
 - Most leading trust accounting software packages will allow separate cash books/control accounts for each foreign currency bank account, and reconcile each account separately.
- 11.4 Some currencies such as Japanese yen will involve such large numbers of digits that you will need to check whether the software will cope with it. If not, there is the alternative of keeping manual records for that currency.
- 11.5 The duty to earn interest on trust account balances (refer Section 114 of the Act) applies equally to foreign currency balances. However, the rates of interest available on those currencies, and the administrative requirements, may vary markedly from New Zealand currency. In terms of Section 114(b), earning interest may not be “reasonable or practicable” unless the amounts involved are large or are to be held for a long period. It may be prudent to discuss the issue with the client.
- 11.6 All the normal trust accounting requirements, including authorities for payment, duty to keep proper records and the like, apply in the same way as to New Zealand currency trust accounts.

12. CONTROLLED BANK ACCOUNTS

- 12.1 As well as monies in the trust account, a practice also has responsibility for the monies it controls outside of the trust account.

Controlled bank accounts are client bank accounts (separate and distinct from the trust account), that any author of a practice may have unrestricted access to i.e. they can sign/authorise solely or jointly with another member of the practice.

Abuse of controlled bank accounts has been the subject of substantial defalcations.

Consideration might be given in each such controlled bank account retainer whether there is good reason why this money must remain “at large” i.e. cannot be transferred to the trust account and thus utilise the supervision, framework and ledger maintenance provided by that system.

- 12.2 The power to operate a client’s bank account will generally take the form of powers of attorney, trusteeships or signing authorities with access to online banking, chequebooks, bank cards or equivalent.
- 12.3 Where in the course of practice you are administering a client’s bank account, you must account and report properly to that client and keep records to the same standard as required in respect of other trust money (Sections 110(3)(b), 110(1), 111(1), 112(1)(a) of the Act; Regulation 11).
- 12.4 It is recommended that practices have a register of such appointments, and consider requiring authors to certify say quarterly that they have no undeclared controlled bank accounts.

Controlled bank accounts can be present without the knowledge of the principals or the Trust Account Supervisor. Where an author has such control over a client’s affairs, often where the client lacks capacity and family support, the practice should be interested in the stewardship of such assets.

Protocols should be put in place to require that all controlled bank accounts and similar arrangements be notified to someone independent in the practice, or in the case of a sole practice, to the s44 attorney. Requiring authors to certify quarterly that they have no undeclared controlled bank accounts is a suggested method of obtaining such notification. Peer file reviews should be alert for any such retainers.

13. REPORTING REQUIREMENTS

(Regulations 12(7) and 17)

Reporting to clients

- 13.1 You must provide to each client a complete and understandable statement of all trust money handled (both trust and IBD):
- in respect of ongoing activity, at intervals of not more than 12 months;
 - in respect of transactions which are not completed within 12 months, at intervals of not more than 12 months; and
 - in respect of all other transactions, promptly upon or prior to completion of the transaction.

It may be appropriate to report more often depending on the retainer.

- 13.2 The report should include opening (or last reported) balance/s, all transactions for the period the report covers and the closing balance. If there is also a balance in the IBD or in term deposit then that should be detailed as well.

Third party reports such as RWT certificates or accountant's financial statements do not meet or relieve a lawyer's reporting obligations.

- 13.3 Unless the client specifically authorises sending to a third party such as an accountant, all reporting must be sent to the client. Where a client's understanding is limited, you should (where possible) account to a person who can represent the client's interest and stand in the client's shoes as an intelligent inquiring owner of the money.
- 13.4 You must take reasonable steps to avoid situations where the only recipient of a statement or invoice is yourself or an associated person.

Periodic certificates to NZLS

- 13.5 You are required to submit a monthly certificate to the NZLS when the trust account has been written up and balanced for the month. The certificate covers matters such as the correctness of the trust account records and compliance with the Regulations. Certificates are required to be submitted via the NZLS website by the 10th working day of every month except that in January, 15 working days are allowed for the certificate as at the end of December. If you are unable to answer 'Yes' to a question, you can answer 'No' and provide an explanation.

Where there has been a bank error that has since been rectified at the time of certifying, you should regard your trust account as being in order and no exception needs to be reported. A list of matters to check before submitting the monthly certificate is on the NZLS website at

<http://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/trust-account-management/frequently-asked-questions-about-trust-account-certificates>

- 13.6 A quarterly certificate is also required to be submitted by each practice on the status of all private/single lender loans administered by the practice where there is a duty to collect interest. Accordingly, a practice that collects such interest should keep records that will enable it to complete these certifications. Please note that the Financial Markets Authority is the regulator for contributory and nominee company lending and that lending does not need to be reported to the NZLS.

Anti-money laundering transactions - reporting to Police

- 13.7 The Financial Transaction Reporting Act (FTRA) imposes duties on financial institutions (which includes law practices) to:
- verify the identity of customers/clients:
 - where there is a suspicious transaction; and
 - automatically in certain specified circumstances including where the amount of cash exceeds \$NZ10,000 or the foreign equivalent;

- report suspicious transactions to the Police Financial Intelligence Unit (FIU), <http://www.police.govt.nz/advice/businesses-and-organisations/fiu/goaml>; and
 - retain transaction, verification and certain other prescribed records for specified periods.
- 13.8 Practices come within the definition of financial institution when they receive funds for the purposes of deposit, investment or settling real estate transactions. Particular points to note in the FTRA are:
- Section 19 of the FTRA (dealing with legal professional privilege) provides that a trust account does not constitute a privileged communication for the purposes of the FTRA.
 - Financial institutions are prohibited from disclosing to any person (other than the Commissioner of Police) any report of a suspicious transaction.
 - The identity of the person reporting a suspicious transaction is protected by the FTRA.
 - A safe deposit service where money is held is subject to the FTRA.
- 13.9 Many practices may prefer to minimise their cash handling risk and responsibility by directing cash deposits to be made directly to their bank. Please be aware that there is a requirement to report even an offer/attempt of cash payment, and having funds directly deposited at the bank does not relieve the practice of its own statutory duty to report. If you fail to comply with the FTRA, you may commit an offence under that act. In addition, under the Crimes Act, criminal offences may be committed if you or your employees suspect that a client is using the trust account to launder money and you allow the transaction to continue. However, it is a defence if you prove that you allowed it to continue with the intention of reporting it to the FIU.
- 13.10 You should ensure that you have copies of the Police guidelines issued pursuant to the FTRA, and that your office procedures are adequate to deal with any situations that may arise. Copies of the Police guidelines can be obtained from the FIU at <http://www.police.govt.nz/advice/businesses-and-organisations/fiu/news-and-documents>.
- Online contact with the FIU can be initiated via their contact form available at:
<https://forms.police.govt.nz/forms/contact-us-financial-intelligence-unit-and-goaml/51>
- The NZLS recommends that practices register with the FIU in anticipation of a potential suspicious transaction because registering as a reporting entity can take some time.
- 13.11 From 1 July 2018 lawyers will become reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009. A summary of the AML/CFT requirements in relation to law practices is set out in Appendix B.
- 13.12 You need to take early steps to ensure that in advance of 1 July 2018, you have all necessary arrangements in place to ensure compliance with the AML/CFT Act.

14. VALUABLE PROPERTY

Obligation to keep records of clients' valuable property

- 14.1 Valuable Property – You must keep records of any valuable property held in trust on behalf of any person (Section 112(1)). The records must be in a form that can be inspected, and (i) describe the property received; (ii) show the date on which the property was received; and (iii) if the property has been disposed of, give details of the disposition of the property, including the date on which and the person to whom the property was disposed of (Sections 111 and 112 of the Act).
- 14.2 Valuable property includes:
- Passports.
 - Saleable chattels such as jewellery.
 - Share certificates held under the practice's control.
- 14.3 A suggested form of record of valuable property is shown below.

Example register of valuable property

Howard & Co				Page No. 1	
Client/Matter: 4789/1					
Client: R L Howarth					
Held on behalf of:					
Security expressed in favour of:					
Date Received	Item Description	Value \$	Maturity Date	Date	Disposal To Whom

Notes:

- This format will serve for security documents as well as chattels.
- Where a computer system includes a deeds register, that will usually meet the need.

15. INVESTMENTS UNDER SECTION 322 OF THE ACT

- 15.1 Client money held by a practice subject to an instruction to invest will generally be excluded from cover by the Lawyers' Fidelity Fund

If you are instructed to invest money within the meaning of Section 322, you are obliged under RCCC 3.4(c) to advise the client in writing that the money will not be covered by the Lawyers' Fidelity Fund.

16. ESTATES AND TRUSTS

- 16.1 You must administer estate and trust monies in accordance with the will, letters of administration, trust deed and directions of the trustees. Executors' transactions (including investment) must be authorised by them unanimously.

You must provide a statement of all trust money handled for the estate or trust at least every 12 months to the executors or trustees and, where appropriate, to the life tenant and residuary beneficiaries of an estate (Regulation 12(7)). It will be appropriate to report to beneficiaries where instructed to do so by the trustees or where you are a solicitor trustee of an estate.

You should advise residuary beneficiaries of estates, without undue delay after probate has been granted, that they are beneficiaries, with an indication of how long the process is likely to take before distribution. Note that failure to report regularly to trustees or beneficiaries, and unexplained delays in administration, are among the most frequent causes of complaints against lawyers.

Where you are a sole executor copies of invoices for estates should be sent to residuary (final) beneficiaries (Regulation 9). If taking fees by deduction, fees must be sent to the residuary (final) beneficiaries.

- 16.2 Ledgers for estates and trusts should be opened in the name of the relevant estate or trust (e.g. 'Smith, John D Estate') rather than in the names of the individual trustees.
- 16.3 A schedule of assets and liabilities should be prepared and sent to executors. This list should be periodically updated.

17. RESIDENT WITHHOLDING TAX (RWT)

- 17.1 Where you have deducted RWT from an amount of interest received on behalf of a client, you must pay that RWT to Inland Revenue by the due date. This could occur if the practice is accounting for RWT in respect of IBD, when a practice pays interest to a client in compensation where funds were

not placed on IBD or where unknown funds were placed on deposit in the practice's name, and later transferred to the client along with the interest earned.

- 17.2 Pending payment to Inland Revenue, deducted RWT must be credited to an account within the trust account labelled "Resident Withholding Tax Deduction Account" or similar.
- 17.3 You must deduct Non-Resident Withholding Tax from interest payments to non-residents in all cases except where the approved issuer levy regime applies. Inland Revenue has issued booklets on NRWT (IR 291) and Approved Issuer Levy (IR 395), which deals with payments to non-residents.

18. ATTORNEYS FOR SOLE PRACTITIONERS

- 18.1 Pursuant to Section 44 of the Act, sole practitioners are required to complete a power of attorney and guidelines to provide some assistance to donors and donees is available on the NZLS website at <http://www.lawsociety.org.nz/for-lawyers/legal-practice/entering-sole-practice>. You should obtain the prior consent of your proposed attorney and alternate and provide a copy of the Power of Attorney document to the NZLS.
- 18.2 It is recommended that practitioners who accept a Section 44 appointment liaise at least annually with the sole practitioner. This means that the attorney remains familiar with the practice and it should therefore be less onerous if the attorney has to assume responsibility for the practice at short notice.
- 18.3 Whenever a Section 44 power of attorney is exercised, the donee becomes the Trust Account Supervisor in terms of Regulation 16 and must be qualified as such.

19. INTERNAL CONTROLS

(Regulation 11)

- 19.1 Internal controls consist of documented policies, procedures and processes established within the law practice to conduct its business in an orderly and efficient manner, to deter and detect errors, fraud and theft, ensure accuracy and completeness in accounting records, and compliance with the Act and Regulations. Documentation sets expectations.

Examples of internal controls which may be implemented within a law practice, dependent on size, include:

- Separation of duties, i.e. separate the duties of receipts, payments and data entry. Bank reconciliations should be completed by an individual not involved with the above tasks. Where it is not possible to separate the tasks, the opportunity of a period of annual leave should be taken to have someone else perform the tasks.
- Documented accounting processes including origination documentation for data entry, daily procedures (timeliness of data entry), and month end procedures (including reconciliation supporting documentation).
- Documented file opening and closing procedures.
- Documented payment procedures, including what supporting documentation is required and what evidence of payee bank account number is required to be seen by the authoriser. Where possible 'two sets of eyes' should see all payments.
- Documented file check lists.
- Form templates e.g. client informed consent, trust statements, settlement statements and client invoicing.
- Documented processes for annual client statements where continuing balances exist within the trust account or IBD account.
- Documented file note procedures.
- A documented file review process.
- Scheduled meetings to discuss current matters.

Computer system security

- 19.2 It is common for law practices to process their trust account records by computer, as well as practice accounts and a number of other applications which are outside the scope of these guidelines (e.g. time recording and accounts receivable). In most applications, there will be a need for appropriate security. Advice should be obtained and proper precautions followed in the design of any system where there is a significant risk to the practice in the event of data loss, hacking or corruption.

The following relates to computer processing of the trust account records:

System access

- 19.3 Many practices now operate networked or cloud-based systems throughout the office thus giving greater access to the various databases in use. Where this is the case there should be first level access control by password at the network entry level. Each subsequently available application software should be considered for password entry control depending on the risk presented by the data held in that application.

Access to the trust account must be controlled by passwords and should give each person only the degree of access required for his/her responsibilities. Individuals will normally have defined tasks, and the access which the system allows each individual should reflect those tasks. For example, the trust accountant would have authority for the full range of accounting entries but other staff would have access only for those types of entries that they are authorised to make; authors may be limited to enquiries only.

Proper procedures must be used in respect of passwords including that they are known to only the respective users, are changed regularly, are not so simple that they might be guessed by others and that the passwords of staff who leave are cancelled. Time out closure should be installed so that if staff leave their computer unattended, unauthorised transactions cannot be made.

Any kind of remote access arrangements (e.g. from laptops or home offices) must be similarly controlled and be secure against hackers.

Software suppliers support their customers by means of remote access, a telephone helpdesk or by sending technicians to the site. In either case, communications with the supplier should be authorised by the Trust Account Supervisor and recorded in a log. The log will give a record of problems and service calls that can prove valuable in later disputes or inquiries.

Controls on input

- 19.4 Proper documented work routines and procedures should be in place to ensure that input is complete, accurate and authorised, e.g.:
- Daily routines, where responsibility for different tasks is clearly allocated.
 - If input batches are used they should be checked and totalled before entry.
 - An input control record should be in use, to record what has been entered and to provide a running total to confirm that shown by the computer.
 - Staff training in input procedures should be considered particularly when staff change.

Controls on output

- 19.5 Most trust accounting systems provide a daily summary of transactions, or transaction lists of receipts, payments and journals are available in the system and should be reviewed for any anomalies or unauthorised entries. This can conveniently be completed at month end when checking the monthly reconciliation. Particular notice should be taken of transaction reversals and correction entries.
- 19.6 Lists of balances and other such information should be periodically distributed to authors so that they can review the balances for which they are responsible and raise any queries as appropriate.

System back-up and recovery

- 19.7 Back-up procedures should be fully documented and checked regularly to ensure they are in operation. Back-up media should be held offsite or placed in fireproof storage at regular intervals

according to the level of transaction volume (e.g. low – monthly; high – daily).

Where the accounting system is cloud-based you should enquire as to where the backup is held. Preferably this would be in New Zealand and/or Australia. Otherwise, you will need to carefully consider the laws of the host country and the associated risks.

Restoration from back-up should be tested regularly.

You should arrange for hardware facilities to be available in the event your system is damaged, destroyed or stolen in a burglary.

For manual systems, it is recommended that the records are scanned regularly (at least every two months) in case of fire/flood etc.

General

- 19.8 It is prudent to document the system and procedures as they apply to your office, in a form that assists with introducing new staff to their role and minimising disruption when a person leaves. Many software systems provide the core of such a procedures manual.

20. SELECTION AND INSTALLATION OF NEW COMPUTER SYSTEMS

- 20.1 Before installing a system, you should carry out adequate research to ensure that a proposed installation will be suitable for the needs of your practice in all aspects of computer processing.

The NZLS has prepared a Practice Briefing 'Choosing trust account and practice management software' <http://www.lawsociety.org.nz/practice-resources/practice-briefings>. The practice briefing is intended to provide general guidance, and lists matters to be considered.

The NZLS Inspectorate also maintains a software contact schedule that lists known available trust accounting software packages. This schedule lists software names and company contacts who can give you further information about the features and prices of their product.

- 20.2 When converting to the new system, the following areas require attention:

- A decision is required as to what data should be converted, all data from the old system, or to start a fresh data base ensuring that the old data is available if required. Starting a fresh database, you would only convert data held for current matters. System transfer time is often underestimated and can be stressful for staff involved.
- If moving from a manual system permanent information such as names, addresses and account codes should be entered before the planned conversion dates so that only the current balances need be entered on the day.
- Initially training will be guided by software house personnel. Thereafter, features should be introduced on a step-by-step basis, at a rate that the staff can absorb – e.g. trust accounting functions, one month; time and cost records, the following month.
- Consider keeping the old system ready to be restarted for a period in case the new system is not fully successful.

Practices are reminded they must keep all trust account records for at least six years from the date of the last transaction.

21. RETENTION OF TRUST ACCOUNT RECORDS

- 21.1 Regulation 11(5) provides that trust account records relating to a client must be retained by the practice for at least six years after the last transaction is recorded in them. There are a number of other legal obligations to retain trust account records for particular periods, such as obligations in respect of income tax and GST. No attempt is made in these guidelines to list all such obligations.

- 21.2 It is recommended that trust account records for Landonline conveyancing transactions be kept for 10 years in parallel with the requirement under r14 of the Land Transfer Regulations 2002 to keep

evidence of the truth of certifications for Landonline transactions for ten years from the date the instrument to which the certification relates is lodged for registration.

- 21.3 On the death or incapacity of a sole practitioner, his or her trust account records must be retained by the successor to the practice or disposed of as required by Regulation 11(5).
- 21.4 For detailed guidance on retention of records, refer to the NZLS website at https://www.lawsociety.org.nz/__data/assets/pdf_file/0003/69762/Ownership-and-retention-of-records-opinion-Apr-2014.pdf

If a practise is closing or merging, refer to the Practice Briefing 'Closing down or selling a law firm' on the NZLS website at <http://www.lawsociety.org.nz/practice-resources/practice-briefings>. If any client balances are to be transferred it is essential either to have client instructions or consult with clients on any such proposed transfer well before the intended date. There is accordingly a 'lead time' of at least one month. The Inspectorate should also be advised and consulted with.

22. MISCELLANEOUS

Daily and monthly routines

- 22.1 The Trust Account Administrator should work to a daily routine of writing up and posting all transactions. It is the Principal/s responsibility to ensure that this routine is followed and is not prejudiced by pressure of other work. Similarly, the monthly routine of balancing the trust ledger, reconciling the bank account, and scrutinising ledger accounts for discrepancies or unusual features should be carried out promptly by the staff and properly monitored. The Principal/s should meet with the whole practice regularly should any concerns over the trust account arise.

Client queries and complaints

- 22.2 The Principal/s should investigate promptly any queries or complaints involving client money, and be alert to any that may indicate a wider problem in the practice. Note that Rule 3.8 of the RCCC requires all law practices to have appropriate procedures for handling client complaints promptly and fairly. Note also the provisions of the RCCC on "Client Service and Competence" (Chapter 3) and "Fees" (Chapter 9).

The NZLS has prepared a Practice Briefing 'Running an effective internal complaints process' which is available on its website: www.lawsociety.org.nz/practice-resources/practice-briefings/Running-an-effective-internal-complaints-process.pdf

It may be prudent to notify the practice's Professional Indemnity insurer (if there is one) immediately if it appears from a complaint that there is a possibility of a claim being made by a client against the practice for any perceived loss. Early notification is recommended to ensure that cover is not jeopardised.

Email Scams

- 22.3 The NZLS regularly updates scam information on its website. Refer <http://www.lawsociety.org.nz/practice-resources/email-scam-information>. Please advise the NZLS if your practice has been involved in a scam that is not recorded, or you have been a victim of a scam.

In addition, CERT NZ encourages anyone who experiences a cyber security threat – or even if they suspect they may have been exposed to one – to contact CERT NZ via www.cert.govt.nz any time or call 0800 CERT NZ, Monday to Friday, 7am – 7pm.


- 22.4 Where your firm is to make a payment to a third party (including another law firm) and has received electronic advice of the third party's bank account, it is desirable that the bank account details be verified, for example by a phone call to the third party.

Retiring or leaving staff

- 22.5 Ensure that there is a process in place for any continuing work to be effectively handed over to another staff member, and that all inactive balances held for clients that the author has acted for are appropriately attended to.

APPENDIX A - TRUST RECEIPT FORM

(Reference: guideline 5.5)

Date:	<i>Note 1</i>	20XX	RECEIVED the sum of:	IB171029
				Receipt issued by
			dollars and	[Name of Practice]
		cents		Barristors & Solicitors
				or [Lawyers]
From:	<i>Note 2</i>	For credit:	<i>Note 3</i>	
Being:	<i>Note 4</i>			
Cash	<input type="checkbox"/>	Code	<i>Note 6</i>	\$
Cheque	<input type="checkbox"/> <i>Note 5</i>	Refs	<i>Note 7</i>	c
Direct Credit	<input type="checkbox"/>		Cashier	

Notes:

1. If remittance is by direct credit to the bank, the date of credit by the bank should be recorded even though this may cause the receipt to be out of date sequence because of delay in receiving bank statements.
2. The name of the payer. If it is a bank cheque, enter the name of the payer who purchased the bank cheque.
3. The name of the client ledger account to be credited.
4. An adequate narration to be entered to record the transaction.
5. Tick whether received by cash/cheque/direct credit.
6. Enter client ledger account number.
7. Record any other reference required by you – e.g. initials of author.

APPENDIX B – AML/CFT COMPLIANCE

On 1 July 2018, lawyers and conveyancers became reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009. The purpose of the AML/CFT regime reflects New Zealand's commitment to the international initiative to counter the impact that criminal activity has on people and economies within the global community.

Lawyers who undertake specified activities ('captured activities') need to ensure they have a programme in place to meet AML/CFT requirements. Captured activities are identified as services which are potentially attractive to criminals as a means of laundering money or financing criminal activity. The AML/CFT compliance regime adopts a risk-based approach.

To meet AML/CFT requirements, law practices need to:

- Appoint a Compliance Officer.
- Undertake a risk assessment of their business. This will enable lawyers to identify the risk of money laundering in different aspects of their practice. The level of risk identified will determine the particular compliance steps a lawyer must take in relation to a particular client.
- Prepare a compliance programme which includes internal procedures, policies and controls to detect and manage the risks of ML/CFT.
- Ensure they know their clients by undertaking customer due diligence (CDD). This includes verifying the identity of their clients and in some cases the sources of client wealth or funding for a transaction. It also includes ongoing account monitoring.
- Report suspicious activity through filing a Suspicious Activity Report (SAR) with the Police's Financial Intelligence Unit (FIU).
- Submit an annual report to the DIA which is the AML/CFT supervisor for the legal profession.
- Arrange a bi-annual independent audit of the firm's AML/CFT compliance programme.
- Establish a recording keeping system.

New Zealand Law Society resources

The Law Society has produced a bundle of resources about AML/CFT to assist lawyers with these compliance requirements. The following sample documents are available for law practices to adapt:

- Risk Assessment

(http://www.lawsociety.org.nz/__data/assets/word_doc/0004/118588/Risk-Assessment.docx)

- Compliance programme

(http://www.lawsociety.org.nz/__data/assets/word_doc/0005/118589/Compliance-Programme.docx)

- AML/CFT policies

(http://www.lawsociety.org.nz/__data/assets/word_doc/0006/118590/Money-Laundering-Policies.doc)

- AML reporting procedure

(http://www.lawsociety.org.nz/__data/assets/word_doc/0007/118591/Anti-Money-Laundering-Reporting-Procedure.doc)

- a. Delayed CDD form

(http://www.lawsociety.org.nz/__data/assets/word_doc/0008/118592/Delayed-CDD-Form.docx)

- b. Exemption form

(http://www.lawsociety.org.nz/__data/assets/word_doc/0009/118593/Exemption-Form.docx)

- c. Matter risk assessment form

(http://www.lawsociety.org.nz/__data/assets/word_doc/0010/118594/Matter-risk-assessment.docx)

d. Full CDD form

(http://www.lawsociety.org.nz/__data/assets/word_doc/0011/118595/Full-CDD-Form.docx)

There is also a practical guide regarding how to use the specimen documents

<http://www.lawsociety.org.nz/practice-resources/practice-areas/aml-cft/how-to-use-the-new-zealand-law-society-specimen-compliance-documents>

Department of Internal Affairs guide

The Department of Internal Affairs has produced a useful guide 'Guideline Lawyers and Conveyancers – Complying with the Anti-Money Laundering and Financing of Terrorism Act 2009 (https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines)' which is available on their website. The sample documents referred to above are designed to complement that Guideline.

Law Society Practice Briefings

The Law Society has prepared Practice Briefings providing guidance on issues related to privilege and confidentiality, suspicious activities and continuing to act comprising the following:

- A guide to advising your clients on why you need to ask for more information.
- Privilege, confidentiality and reporting suspicious activities.
- Continuing to act after filing suspicious activity reports.
- Suspicious transactions and activities.

The Law Society will keep lawyers updated on AML/CFT developments via *LawPoints* and *LawTalk*.

APPENDIX C

FATCA – Foreign Account Tax Compliance Act

The FATCA agreement between New Zealand and the United States of America (USA) is directed at reducing tax evasion by USA taxpayers. New Zealand law firms with trust accounts are likely to be subject to FATCA provisions.

The Law Society has produced a practice briefing to assist law firms which have a trust account to assess their FATCA obligations. These include the completion of self-certification documentation where funds are placed onto IBD. The practice briefing can be found here:

<http://www.lawsociety.org.nz/practice-resources/practice-briefings>

AEOI & CRS – Automatic exchange of information and common reporting standards

Similar to FATCA is the OECD version, Automatic Exchange of Information or Common Reporting Standards (“CRS”). The objective of CRS is to reduce offshore tax evasion by exchanging information with member countries.

The Law Society has produced a practice briefing to assist law firms which have a trust account to assess their AEOI/CRS obligations. These include the completion of self-certification documentation where funds are placed onto IBD. The practice briefing can be found here:

<http://www.lawsociety.org.nz/practice-resources/practice-briefings/Automatic-Exchange-of-Information-and-Common-Reporting-Standard-June-2017.pdf>

Lawyers can refer to the IRD’s website for further information including IRD’s Guidance and New Zealand CRS Applied Standard in relation to categorisation of Financial Accounts, and due diligence requirements.

