

1969/53



THE SOLICITORS AUDIT REGULATIONS 1969

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 24th day of March 1969

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Law Practitioners Act 1955, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Title and commencement 2. Interpretation 3. Consents, etc., of Council of District Law Society | <ol style="list-style-type: none"> 11. Auditor's consent to nomination required 12. Nomination of another accountant on death, etc., of auditor |
| <p>PART I</p> <p>NOTIFICATION BY SOLICITORS RELATING TO PRACTICE</p> | <p><i>Appointment</i></p> |
| <ol style="list-style-type: none"> 4. Cases where solicitor must give notice 5. Method of giving notice | <ol style="list-style-type: none"> 13. Method of appointment 14. Notice of disqualification or inability to carry out duties 15. Termination of appointment |
| <p>PART II</p> <p>QUALIFICATION FOR NOMINATION AS AUDITOR</p> | <p><i>Remuneration</i></p> |
| <ol style="list-style-type: none"> 6. Qualification of accountant 7. Persons closely related by blood or marriage may be disqualified as auditors 8. Absolute disqualification as auditor | <ol style="list-style-type: none"> 16. Remuneration of auditor 17. Cost of auditing trust accounts to be borne by solicitor |
| <p>PART III</p> <p>NOMINATION, APPOINTMENT, AND REMUNERATION OF AUDITORS</p> <p><i>Nomination</i></p> | <p><i>Responsibility of Auditor</i></p> |
| <ol style="list-style-type: none"> 9. Notices to nominate auditor 10. Responsibility of solicitor when nominating auditor | <ol style="list-style-type: none"> 18. Responsibility of auditor to solicitor |
| | <p>PART IV</p> <p>DUTIES OF SOLICITORS RELATING TO TRUST ACCOUNTS</p> <p><i>General Duties</i></p> |
| | <ol style="list-style-type: none"> 19. Duty to keep books and account for money 20. Duty to procure audit 21. Duty to produce books, etc. 22. Restriction on opening and operating savings bank account |

23. Amounts withdrawn from savings bank account
24. Trust ledger account not to be over-drawn
25. Restriction on transactions with certain companies

Personal Transactions of Solicitors

26. Restrictions on use of trust account for personal transactions
27. Receipt of money from client on deposit or unsecured loan

Agencies

28. Agencies

Special Receipt Forms

29. Special receipt forms
30. Duty to use special receipt forms
31. Solicitor ceasing practice

Register of Trust Securities

32. Duty to keep Register of Trust Securities
33. When entries in Register to be made

Solicitors' Costs

34. Restriction in debiting of costs
35. Costs and disbursements paid in advance

Monthly List of Trust Account Balances and Certificate

36. Duty to forward monthly list to auditor
37. Reconciliation statements
38. Certificate that list forwarded

Four-monthly Certificate

39. Four-monthly statement and certificate
40. Certificate
41. Time within which certificate to be forwarded

Annual Certificate if no Trust Account Money Handled

42. Duty to forward annual certificate if no trust account money handled

Cessation of Practice or Dissolution of Partnership

43. Cessation of practice or dissolution of partnership

PART V

DUTIES OF AUDITORS

General Duties

44. Duty to audit in prescribed manner
45. Retirement of auditor
46. Auditor becoming disqualified or unable to continue

Examinations of Trust Accounts

47. At least three examinations in any year
48. When examinations to be completed
49. Examinations where solicitor not in practice on 1 April
50. Audit on cessation of practice or dissolution of partnership
51. Certain matters to be checked and verified
52. Further examinations
53. Death of solicitor
54. Solicitor ceasing practice

Reports

55. Duty to report certain matters
56. Report on final audit for year
57. Extension of period for reporting
58. Report for previous year to be available to auditor

PART VI

SOLICITOR-TRUSTEES

Duties of Solicitors and Auditors

59. Receipt for trust money
60. Solicitor-trustees
61. Solicitor acting jointly in respect of trust estate

PART VII

SOLICITOR-ATTORNEYS

62. Solicitor-attorneys

PART VIII

DEFAULTS AND IRREGULARITIES

63. Default in presenting final report
64. Certain reports to be laid before President of Society
65. Duty to report to New Zealand Law Society
66. Power of Council to examine auditor and others

PART IX

DISCLOSURE OF INFORMATION

67. Duty of auditor not to disclose information
68. Liability of auditor who discloses information
69. Circumstances in which information may be disclosed
70. Duty of bank
71. Auditor to be agent of solicitor for certain purposes

PART X

MISCELLANEOUS PROVISIONS

72. Offences
73. Revocations and savings Schedules

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Solicitors Audit Regulations 1969.

(2) These regulations shall come into force on the 1st day of April 1969.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Accountant” means a member of the New Zealand Society of Accountants who is classified as a public accountant, or who is a Law Society audit inspector:

“Auditor” means an accountant appointed pursuant to regulation 13 hereof to audit the trust accounts of any solicitor:

“Bank” means a bank within the meaning of the Law Practitioners Act 1955:

“District Law Society” means, in relation to any place of practice of a solicitor, the District Law Society of the district in which the place of practice is situate, and if he practices in more than one district, the District Law Society of each such district respectively:

“Law Society audit inspector” means a registered accountant employed by the New Zealand Law Society to audit trust accounts:

“Month” means a calendar month:

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

“Solicitors nominee company” means a company operated by a solicitor with the consent of the District Law Society as a nominee in respect of securities and documents of title held for clients:

“Trust account” means the books of account and records in relation to trust account money:

“Trust account money” means all money which is, when received by a solicitor, subject to the provisions of section 71 of the Law Practitioners Act 1955:

“Trust banking account” means a banking account which contains trust account money or into which trust account money is paid and includes banking accounts made subject to these regulations pursuant to regulation 60 hereof; but does not include fixed deposit accounts:

“Trust securities” means bearer debentures or certificates, other securities transferable by delivery, or deposits held by or under the control of a solicitor for or in trust for any other person, and any other securities or documents of title in the name of a solicitor or his employee (in his capacity as an employee of the solicitor) for or in trust for any other person and held by or under the control of the solicitor; and includes any securities held in trust for any other person in the name of any company controlled by the solicitor or his employee (in that capacity) other than securities for money lent in the name of a solicitors nominee company:

“Year” means a period of 12 months ending with the 31st day of March.

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

PART I

NOTIFICATIONS BY SOLICITORS RELATING TO PRACTICE

4. Cases where solicitor must give notice—Notice thereof as provided in regulation 5 hereof and (as regards paragraphs (a), (b), and (c) of this regulation) in regulation 9 hereof shall be given by every solicitor who—

- (a) At any place, whether by himself or in partnership, and whether or not he has theretofore been or remains in practice in any other place—
 - (i) Commences practice; or
 - (ii) Recommences practice; or
 - (iii) Opens a branch of his practice:

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

- (b) Amalgamates his practice or a branch of his practice with the practice or a branch of the practice of any other solicitor:
- (c) Being in a partnership which is dissolved otherwise than as specified in paragraphs (e) and (f) of this regulation, continues to practice:
- (d) Being in a partnership which is dissolved, ceases to practice:
- (e) Has a partner who dies or retires:
- (f) Admits a new partner or partners:
- (g) Ceases to carry on his practice or a branch of his practice (whether or not he continues to carry on any other branch thereof).

5. Method of giving notice—Every notice required by regulation 4 hereof shall be in writing signed by the solicitor and given to the Secretary of the District Law Society and the Secretary of the New Zealand Law Society before the proposed occurrence of any of the matters in respect of which notice is required to be given in terms of paragraph (a) of regulation 4 hereof and not later than 2 weeks after the occurrence of any of the matters in respect of which notice is required to be given in terms of paragraphs (b) to (g) of regulation 4 hereof:

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

PART II

QUALIFICATION FOR NOMINATION AS AUDITOR

6. Qualification of accountant—Subject to the provisions of regulations 7 and 8 hereof, every accountant as defined in regulation 2 hereof shall be qualified for nomination by a solicitor as the auditor of his trust accounts.

7. Persons closely related by blood or marriage may be disqualified as auditors—If an accountant nominated by a solicitor as his auditor is so closely related by blood or marriage to that solicitor that in the opinion of the Council of the District Law Society his appointment or the continuation of his appointment as auditor of that solicitor is undesirable, the Council may notify the solicitor to that effect, and thereupon the accountant shall no longer be qualified to audit any trust account of that solicitor.

8. Absolute disqualification as auditor—Notwithstanding anything in these regulations, no accountant shall be qualified to audit any trust account of a solicitor if—

- (a) He is, or at any time within 1 year of his nomination by the solicitor has been, a clerk, servant, or partner of the solicitor; or
- (b) He is a clerk or servant of any other solicitor in practice on his own account or in partnership; or
- (c) He is himself a solicitor in practice on his own account or in partnership; or
- (d) He is, or at any time within 1 year of his nomination has been, engaged in keeping the books of the solicitor; or
- (e) For the time being a member of his firm is, or within 1 year previously has been, engaged in keeping the books of the solicitor; or
- (f) For the time being a member of his staff is engaged in keeping the books of the solicitor:

Provided that nothing in this regulation shall prevent the completion for the solicitor by an auditor or a member of his firm or staff of the closing entries at the end of a financial year or other period, or the preparation of the profit and loss account, balance sheet, or returns for taxation.

PART III

NOMINATION, APPOINTMENT, AND REMUNERATION OF AUDITORS

Nomination

9. Notices to nominate auditor—Every notice required by any of the provisions of paragraphs (a), (b), and (c) of regulation 4 and regulation 12 hereof shall set out the name of an accountant nominated by the solicitor for appointment by the Council of the District Law Society as the auditor of his trust accounts or (as the case may require) of the trust account specified in the notice or of his trust accounts kept or to be kept at the branch of his practice specified in the notice:

Provided that a Law Society audit inspector may be nominated as auditor by any solicitor without setting out the name of any person as auditor.

10. Responsibility of solicitor when nominating auditor—It shall be the responsibility of every solicitor, when nominating an accountant for appointment as the auditor of the trust accounts of that solicitor, to satisfy himself that the accountant is qualified in terms of regulation 6 hereof to make such an audit and that the accountant is not disqualified in terms of regulation 8 hereof in respect of the audit of the trust accounts of that solicitor; and if he knows of any relationship by blood or marriage between him or any partner of his and the auditor which should be taken into account by the Council of the District Law Society in making its appointment he shall notify the Council thereof.

11. Auditor's consent to nomination required—It shall be the duty of every solicitor when nominating an accountant, other than a Law Society audit inspector, for appointment by the Council of the District Law Society as the auditor of that solicitor's trust accounts to ensure that the consent in writing of the accountant to the nomination is forwarded to the Secretary of the District Law Society.

12. Nomination of another accountant on death, etc., of auditor—When an auditor dies, or retires from the audit of the trust accounts of a solicitor, or if notice is received by a solicitor from the District Law Society that the auditor is no longer qualified under these regulations to audit the trust accounts of that solicitor, or if the appointment of the auditor has in any other way been lawfully terminated, the solicitor shall within 2 weeks thereafter give in respect of some other accountant notice as provided in regulation 9 hereof.

Appointment

13. Method of appointment—Every appointment of an auditor shall be made by the Council of the District Law Society as agent for the New Zealand Law Society. If the Council does not approve the accountant nominated by the solicitor, the solicitor shall forthwith submit a further nomination. Advice of appointment of an auditor shall be given by the Secretary of the District Law Society to the solicitor, the auditor, and the New Zealand Law Society.

14. Notice of disqualification or inability to carry out duties—It shall be the responsibility of every solicitor forthwith to notify the District Law Society if, subsequent to the appointment by that society of an auditor of the trust accounts of that solicitor, the auditor becomes or may become disqualified in terms of regulations 7 and 8 hereof in respect of the audit of the trust accounts of that solicitor or if the solicitor has reason to consider that the auditor, because of illness or any other cause, is unable to carry out his duties as auditor.

15. Termination of appointment—Any appointment of an auditor under regulation 13 hereof may at any time be terminated by the Council of a District Law Society by notice in writing given to the auditor; and notice of the termination shall be given forthwith by the District Law Society to the solicitor.

Remuneration

16. Remuneration of auditor—(1) Where the auditor is a public accountant, the fees payable by a solicitor to his auditor in respect of the audit and report shall be such as are agreed upon between the solicitor and the auditor, or failing agreement shall be determined by the President of the District Law Society and the Chairman of the local branch of the New Zealand Society of Accountants or their nominees.

(2) Where the auditor is a Law Society audit inspector, the fees payable by a solicitor to the New Zealand Law Society in respect of the audit and report shall be such as are agreed upon between the solicitor and the New Zealand Law Society, or failing agreement shall be determined by the President of the New Zealand Law Society.

17. Cost of auditing trust accounts to be borne by solicitor—Subject to any written agreement to the contrary between a solicitor and any person for or in trust for whom any money is received or held by the solicitor, the cost of auditing his trust accounts shall be borne by the solicitor.

Responsibility of Auditor

18. Responsibility of auditor to solicitor—The appointment of an auditor by the Council of the District Law Society shall not absolve the auditor from his responsibilities to the solicitor by whom his fees are payable.

PART IV

DUTIES OF SOLICITORS RELATING TO TRUST ACCOUNTS

General Duties

19. Duty to keep books and account for money—It shall be the duty of every solicitor—

- (a) To keep his trust account books and records in such a manner as to disclose clearly the position of the funds therein and to enable the same to be conveniently and properly audited; and
- (b) To account properly for trust account money to his clients.

20. Duty to procure audit—It shall be the duty of every solicitor to procure all his trust accounts to be audited in manner prescribed by these regulations.

21. Duty to produce books, etc.—Every solicitor shall, as and when required by the auditor, produce to the auditor all books, papers or files of papers, accounts, statements, bills of costs or copies thereof, documents, receipts and evidence of authority for payments, securities, and books of trust receipt forms used and unused required by the auditor for the purposes of the audit and shall give to the auditor such information as he may reasonably require.

22. Restriction on opening and operating savings bank account—No solicitor shall open or operate any savings bank account which includes money held in trust for more than one client.

23. Amounts withdrawn from savings bank account—All amounts withdrawn by a solicitor from any savings bank account subject to these regulations shall be paid into a general trust banking account of that solicitor.

24. Trust ledger account not to be overdrawn—No trust ledger account of any client or of the solicitor shall at any time be permitted to be overdrawn.

25. Restriction on transactions with certain companies—No solicitor shall cause or permit—

- (a) Money of any client to be deposited with or lent to; or
- (b) Rent, interest, instalments, or debts due to a client to be collected by—

any company in respect of which the principal financial benefit or the effective control is vested directly or indirectly in any one or more of the following persons, namely, the solicitor, any of his partners, his spouse or child or the spouse or child of any of his partners or any two or more of them:

Provided that nothing in this regulation shall prevent the operation of a solicitors nominee company.

Personal Transactions of Solicitors

26. Restrictions on use of trust account for personal transactions—The trust account of a solicitor shall not be used for the solicitor's private and household transactions but may be used for his property and investment transactions if they are kept in a definite and separate ledger account in the name of the solicitor and are dealt with in all respects as if the solicitor was a client.

27. Receipt of money from client on deposit or unsecured loan—No solicitor shall receive any money from a client on account of the solicitor or on account of his spouse or on account of both the solicitor and his spouse either—

- (a) On deposit; or
 - (b) By way of loan without security over any property—
- except under the following conditions:

(i) Before the making of any such deposit or loan the solicitor shall secure the signature of the depositor or lender to a written acknowledgment in the form set out in the First Schedule hereto:

(ii) The signature thereto of the depositor or lender shall be attested by the Secretary of the District Law Society or by an independent solicitor; and it shall be the duty of the Secretary or independent solicitor to satisfy himself that the depositor or lender fully understands the nature and effect of the proposed deposit or loan and of the said acknowledgment:

(iii) Copies of the said acknowledgment shall forthwith be lodged with the District Law Society and with the New Zealand Law Society and with his auditor:

(iv) A trust receipt shall be issued which shall contain such particulars of names, amounts, and dates as shall clearly identify the deposit or loan with the deposit or loan acknowledged in the said acknowledgment.

Agencies

28. Agencies—Where a solicitor is acting as agent for an insurance company, building society, or any such body and the agency arrangements require the use of the company's or society's form of receipt or other acknowledgment for payments made to him, the solicitor shall obtain a written acknowledgment from the company or society that, in receiving and disbursing amounts in terms of the arrangement, the solicitor is acting as agent only of the company or society and not as solicitor, and that no claim will lie against the Solicitors Fidelity Guarantee Fund. Each such acknowledgment shall be produced to the auditor of the trust account for noting and a copy forwarded to the Secretary of the New Zealand Law Society. Except in the case of an agency for a fire insurance company or building society, no such agency shall be undertaken without the prior consent of the District Law Society.

Special Receipt Forms

29. Special receipt forms—(1) No solicitor shall give a receipt for trust account money received by him or paid directly into his trust banking accounts except on a form of receipt supplied to the solicitor by the New Zealand Law Society or some person authorised by it in that behalf. Such forms shall be supplied to solicitors arranged so that a carbon duplicate of each receipt issued may be retained and, before being supplied, shall be numbered or lettered, or both numbered and lettered, consecutively so that the form of receipt and duplicate shall have the same identification mark. The forms as supplied shall be used without any overprinting whatsoever except as may be approved by the New Zealand Law Society or, in respect of a change in the name of a solicitor or firm, by the District Law Society.

(2) The New Zealand Law Society or the person authorised by it to supply forms of receipt shall keep a record of the identification marks of all such forms supplied to any solicitor, and shall promptly notify to each auditor the particulars of all forms supplied to a solicitor whose trust accounts he has been appointed to audit.

30. Duty to use special receipt forms—Every solicitor shall, for every sum of trust account money received by him, forthwith prepare and issue a receipt in one of the forms supplied to him as aforesaid and shall make and retain a legible carbon duplicate of the receipt:

Provided that a solicitor shall retain the original receipt with the carbon duplicate thereof for the following payments made directly to him or to his trust banking account:

- (a) Interest and principal payments on Government and local authority inscribed stock or bearer bonds:
- (b) Money from any Government department:
- (c) Money withdrawn from any bank:

(d) Company dividends and interest and principal on company debentures except where a receipt is requested; and may retain the original receipt as aforesaid where money is received from companies or corporations which have indicated that they do not require a receipt.

31. Solicitor ceasing practice—Before the completion of the audit of the trust accounts of any solicitor who ceases practice, the solicitor shall deliver all unused trust account receipt forms in his possession to his auditor.

Register of Trust Securities

32. Duty to keep Register of Trust Securities—Every solicitor shall keep a register, in a form approved by his auditor, to be known as the Register of Trust Securities, in which shall be entered in respect of all trust securities a clear record of the following particulars, namely—

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

Provided that no entry in the Register of Trust Securities shall be required in respect of—

- (i) Such trust securities as are received by the solicitor for immediate collection and conversion into money and which money is the subject of a trust account receipt; or
- (ii) A sealed packet which is handed to a solicitor for safe custody only.

33. When entries in Register to be made—The entries referred to in paragraphs (a) to (d) of regulation 32 hereof shall be made forthwith upon the receipt by the solicitor of any trust security, and the entries referred to in paragraphs (e) and (f) of regulation 32 hereof shall be made forthwith upon the delivery of any trust security out of the solicitor's possession and control.

Solicitors' Costs

34. Restriction on debiting of costs—No trust account of any client shall be debited with any costs of the solicitor (except commission properly chargeable on the collection of money and disbursements) unless—

- (a) A dated bill of costs has been rendered in respect thereof and a copy of the bill is available for inspection by the auditor; 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 auditor:

Provided that a bill of costs shall be deemed to have been rendered on the date when it is delivered to the person liable for payment or to his solicitor or placed in the post addressed to him or to his solicitor at his last known address.

35. Costs and disbursements paid in advance—Except so far as an agreement pursuant to section 56 of the Law Practitioners Act 1955 has been made with a client, all costs and disbursements paid in advance by a client shall be paid into a trust banking account and shall remain in the account until they are disbursed on his behalf or applied in payment of costs as authorised by these regulations.

Monthly List of Trust Account Balances and Certificate

36. Duty to forward monthly list to auditor—In the month of January not later than the 28th day of January and in each succeeding month not later than the 10th day on which the offices of solicitors in the district of the District Law Society are normally open for business during that month, every solicitor for the time being practising on his own account without partners, and every firm of solicitors shall forward to the auditor a list certified by the solicitor, or, in the case of a firm, by one of the members of the firm, of the balances appearing in the trust accounts of every client and of the amount of money (if any) of himself or his firm in each trust banking account of himself or his firm respectively as at the end of the last preceding month, and shall also supply a copy of the reconciliation statement referred to in regulation 37 hereof:

Provided that the requirements of this regulation shall not apply to balances in banking accounts to which regulations 60 and 61 hereof apply.

37. Reconciliation statements—Every solicitor for the time being practising on his own account without partners and every firm of solicitors, shall at the end of every month cause the balance of his or the firm's trust banking accounts to be agreed with the balance of his or the firm's cashbook relating thereto and with the total of the lists referred to in regulation 36 hereof, and shall keep in the cashbook or other appropriate place reconciliation statements showing the agreement.

38. Certificate that list forwarded—In each month within the period that the list referred to in regulation 36 hereof is to be forwarded to the auditor, the solicitor or firm shall forward to the Secretary of the New Zealand Law Society a certificate that the list has been forwarded to the auditor.

Four-monthly Certificate

39. Four-monthly statement and certificate—(1) Every solicitor for the time being practising on his own account without partners, and every firm of solicitors, as on the last day of each of the months of July, November, and March of each year, shall—

(a) Prepare a statement listing—

(i) All banking accounts to which regulations 60 and 61 hereof apply, with particulars regarding the name of each

such banking account, the persons authorised to operate upon the account, the trustees, and whether separate books of account are kept:

(ii) All banking accounts not included in subparagraph (i) of this paragraph to which regulations 60 and 61 hereof have applied during the preceding 4 months; and

(b) Certify—

(i) That the statement pursuant to paragraph (a) of this subclause is complete, and

(ii) That particulars of all trust securities which have been received by him during the 4 months preceding the date as at which the statement is prepared have been entered in the Register of Trust Securities pursuant to regulations 32 and 33 hereof.

(2) Wherever appropriate, a “nil” certificate shall be given.

40. Certificate—The solicitor, or, in the case of a firm, one of the members of the firm, shall sign the certificate required by regulation 39 hereof.

41. Time within which certificate to be forwarded—The solicitor or firm shall forward each statement pursuant to regulation 39 hereof to the auditor within 10 working days of the date to which it refers and shall retain a copy thereof.

Annual Certificate if no Trust Account Money Handled

42. Duty to forward annual certificate if no trust account money handled—A solicitor in practice on his own account who has not handled any trust account money during any year shall, within 1 month after the end of that year, forward to the Secretary of the District Law Society his certificate stating that fact.

Cessation of Practice or Dissolution of Partnership

43. Cessation of practice or dissolution of partnership—Within 1 month after any solicitor ceases to carry on his practice or a branch of his practice in respect of which a separate trust account is kept, or within 1 month of the dissolution of any partnership (otherwise than by the admission of a new partner or partners), it shall be the duty of the solicitor or, as the case may be, the executors or administrators of a deceased solicitor or of each member of the firm at the time of dissolution to cause the trust accounts kept in connection with the practice (or, as the case may be, the said branch of the practice) to be finally audited and reported upon pursuant to this regulation as if the date of ceasing to carry on the practice or branch of a practice or the date of dissolution were the 31st day of March.

PART V

DUTIES OF AUDITORS

General Duties

44. Duty to audit in prescribed manner—It shall be the duty of every auditor appointed to audit any trust account of a solicitor to conduct the audit in the manner prescribed by these regulations.

45. Retirement of auditor—Any auditor who intends to retire from the position of auditor of the trust accounts of a solicitor shall give not less than 4 weeks' notice in writing of that intention to the Secretary of the District Law Society and to the solicitor.

46. Auditor becoming disqualified or unable to continue—Any auditor who for any reason ceases to be qualified to audit any trust account of a solicitor or who becomes unable to continue the audit shall forthwith notify the fact in writing to the Secretary of the District Law Society and to the solicitor.

Examinations of Trust Accounts

47. At least three examinations in any year—Except in the case of a solicitor not in practice on the 1st day of April in any year, the auditor of any trust account shall examine the account on at least three occasions.

48. When examinations to be completed—(1) The first of the examinations shall be completed not earlier than the 1st day of August and not later than the 31st day of October.

(2) The second examination shall be completed not earlier than the 1st day of December and not later than the 31st day of March.

(3) The third examination shall complete the audit for the year, and shall be completed not earlier than the 1st day of April and not later than the 30th day of June.

49. Examinations where solicitor not in practice on 1 April—The auditor of any trust account of a solicitor not in practice on the 1st day of April in any year shall, in respect of that year, examine the account on such occasions as may be required by the Council of the District Law Society.

50. Audit on cessation of practice or dissolution of partnership—The auditor of any trust account shall also complete an audit of that account whenever so required pursuant to regulation 43 hereof.

51. Certain matters to be checked and verified—Upon every examination made under regulations 48, 49, and 50 hereof, the auditor shall complete all such checking and verification which in his opinion is necessary to satisfy himself that the trust accounts of the solicitor are in order and shall,—

(a) In respect of all banking accounts included in the statement pursuant to regulation 39 hereof, ensure that audit requirements pursuant to regulations 60 and 61 hereof are complied with:

(b) Examine or satisfy himself as to the whereabouts of trust securities listed in the Register of Trust Securities referred to in regulation 32 hereof which have not before the time of his examination passed out of the solicitor's possession or control, and verify entries in the Register relating to the disposal of securities:

(c) Verify documents of security in the name of any solicitors nominee company.

52. Further examinations—The auditor may make other or further examinations at any time either by arrangement with the solicitor or of his own motion.

53. Death of solicitor—Upon the death of any solicitor practising by himself and not in partnership, his auditor shall as soon as possible take charge of all unused trust account receipt forms, and upon completion of the audit of the trust accounts of the deceased solicitor the auditor shall forthwith deliver the forms to the Secretary of the District Law Society to be disposed of as the Council of the said Society thinks fit:

Provided that action by the auditor to take charge of the unused trust account receipt forms may be postponed during any period that a donee of a power of attorney is conducting the practice pursuant to the provisions of the power of attorney and of sections 19 and 20 of the Law Practitioners Amendment Act 1961.

54. Solicitor ceasing practice—Upon completion of the audit of the trust accounts of any solicitor who ceases practice, the auditor shall forthwith deliver all unused trust account receipt forms received by him pursuant to regulation 31 hereof to the Secretary of the District Law Society to be disposed of as the Council of the said Society thinks fit.

Reports

55. Duty to report certain matters—An auditor shall report forthwith in writing to the Secretary of the District Law Society if at any time he—

- (a) Considers that any trust account of a solicitor is not kept in such a manner as to enable it to be properly audited; or
- (b) Discovers any matter in relation to the practice which appears to him to involve dishonesty on the part of the solicitor or an employee; or
- (c) Discovers any loss or deficiency of trust account money or any failure by the solicitor to pay or account for any such money; or
- (d) Discovers any failure by the solicitor to comply with the provisions of these regulations; or
- (e) Considers that any other matter in relation to the audit should be communicated to the Council of the District Law Society.

56. Report on final audit for year—Forthwith after conducting the examination that completes the audit for the year, including an audit of a trust estate pursuant to regulation 60 or regulation 61 hereof or a final audit pursuant to regulation 43 hereof, the auditor shall send with a covering letter signed by himself a report to the Secretary of the District Law Society in the form set out in the Second Schedule hereto, and shall at the same time forward a signed copy of his report to the solicitor or the executors or administrators of a deceased solicitor to whose accounts it relates.

57. Extension of period for reporting—If an auditor is unable because of illness or any other cause to complete the examination of any trust account or any report within the period provided in these regulations,

he shall before the expiry of the period apply to the Secretary of the District Law Society for an extension of that period, and the Council of the Society may approve such extension of time as it sees fit.

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

PART VI

SOLICITOR-TRUSTEES

Duties of Solicitors and Auditors

59. Receipt for trust money—Where a solicitor for the time being practising on his own account, or a firm of solicitors, actually receives any money subject to a trust either by himself or itself or by his or its servants, a trust account receipt shall be issued in accordance with regulation 30 hereof.

60. Solicitor-trustees—If the solicitor is sole trustee, or if—

- (a) Two or more solicitors who are partners of the same firm; or
- (b) A solicitor and any one or more persons in his employ; or
- (c) A solicitor, or two or more solicitors who are partners of the same firm, and any one or more persons in the employ of the firm or of a member thereof,—

are joint trustees and the only trustees, and if in respect of the trust estate a separate trust banking account is kept, that account shall be deemed to be a separate trust account within the meaning of section 71 of the Law Practitioners Act 1955 and these regulations, and, together with any separate books of account, shall be audited by the auditor of the solicitor or by another auditor appointed for the purpose pursuant to regulation 13 hereof.

61. Solicitor acting jointly in respect of trust estate—If—

- (a) The solicitor is trustee jointly in circumstances other than those set out in paragraphs (a), (b), and (c) of regulation 60 hereof; and
- (b) The solicitor has authority by himself or jointly with any partner or any person in his employ or in the employ of the firm or of any member thereof to operate upon any banking account of the trust estate,—

the auditor of the solicitor shall either audit the accounts of the trust estate or satisfy himself by the certificate of a public accountant or Law Society audit inspector that the accounts of the trust estate are duly audited.

PART VII

SOLICITOR-ATTORNEYS

62. Solicitor-attorneys—A solicitor who holds a power of attorney from his client shall, when acting as solicitor for the client, comply with these regulations.

PART VIII

DEFAULTS AND IRREGULARITIES

63. Default in presenting final report—If within 7 days after the last day on which any audit should be completed pursuant to any of the provisions of regulations 48, 49, and 50 hereof or within such extended period as the Council of the District Law Society may approve as provided in regulation 57 hereof, the Secretary of the District Law Society has not received the report prescribed by regulation 56 hereof, he shall forthwith report the fact to the President of the District Law Society, who shall cause the matter to be considered by the Council thereof.

64. Certain reports to be laid before President of Society—Every report furnished to the Secretary of the District Law Society in accordance with regulation 55 hereof, and every report under regulation 56 hereof which includes any matter which in the opinion of the auditor as stated therein should be communicated to the Council of the District Law Society, shall forthwith be laid before the President of the Society by the Secretary, and the President shall cause the matter to be considered by the Council of the Society, and the Council may investigate the matter and, if necessary, institute proceedings against the solicitor concerned.

65. Duty to report to New Zealand Law Society—The Council of the District Law Society shall forward a report to the New Zealand Law Society on every matter considered by the Council of the District Law Society pursuant to regulation 64 hereof, stating what action, if any, has been taken in regard thereto.

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

PART IX

DISCLOSURE OF INFORMATION

67. Duty of auditor not to disclose information—Save in any report to the Secretary of the District Law Society or the Secretary of the New Zealand Law Society, or on being examined in any investigation conducted by the Council of the District Law Society, or in or for the purpose of any proceedings which may arise out of any such report or otherwise in relation to the trust accounts of the solicitor concerned, or with the previous consent of the Council of the District Law Society

or the Council of the New Zealand Law Society, no auditor shall disclose to any person any information which he has obtained in the course of his audit.

68. Liability of auditor who discloses information—Every auditor who commits a breach of regulation 67 hereof shall, in addition to any penalty provided for in Part X hereof, be subject to the like liability in damages (if any) to any client of that solicitor damaged by the disclosure of the information as the solicitor would be if the solicitor had disclosed that information.

69. Circumstances in which information may be disclosed—With the consent of the Council of the District Law Society or the Council of the New Zealand Law Society, the Secretary of the respective Society may furnish to any person any information contained in reports of auditors in the hands of the Society in so far as it relates to money or securities in which the person has an interest, and may furnish to the New Zealand Society of Accountants any information which that Society may require for the purpose of investigations involving its members.

70. Duty of bank—It shall be the duty of every bank and of the manager for the time being of every branch of the bank, on the request of any auditor engaged in the audit of a solicitor's trust accounts under these regulations, and without reference to the solicitor, to supply to that auditor a list of the accounts operated on by the solicitor and all such information as to the bank account or accounts of that solicitor or of any account on which the solicitor operates as may reasonably be required for the purposes of the audit.

71. Auditor to be agent of solicitor for certain purposes—Every auditor shall at all times during the existence of his appointment to audit a trust account of any solicitor be the agent of that solicitor to obtain from the bank at which the banking account of the money belonging to that trust account is kept all cheques drawn upon the banking account and to give to the bank sufficient receipts and acknowledgments for cheques so obtained.

PART X

MISCELLANEOUS PROVISIONS

72. Offences—(1) Every solicitor, auditor, banker, or other person who fails to comply with or acts in contravention of any provision of these regulations commits an offence and is liable on summary conviction to a fine not exceeding \$200.

(2) If two or more solicitors or other persons in partnership fail to comply with or act in contravention of any provision of these regulations, each of those persons commits an offence and is liable on summary conviction to a fine not exceeding \$200.

(3) The foregoing provisions of this regulation shall not limit or derogate from the disciplinary powers of the Council of any District Law Society or the Disciplinary Committee of the New Zealand Law Society under the Law Practitioners Act 1955 or of the Disciplinary Committee or the Committee of Appeal under the New Zealand Society of Accountants Act 1958.

73. Revocations and savings—(1) The regulations specified in the Third Schedule hereto are hereby revoked.

(2) Whereas the Council of the New Zealand Law Society, by resolution passed on the 29th day of November 1968, revoked the Solicitors Deposit Rules 1937* as from the date of the coming into force of these regulations: be it therefore declared that the said revocation is hereby approved.

(3) The regulations revoked by subclause (1) of this regulation shall, notwithstanding their revocation, continue to apply to the audit of any trust account for the year ending with the 31st day of March 1969 and to all matters arising out of that audit or any failure to make or complete that audit as fully as if they had not been revoked.

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

SCHEDULES

FIRST SCHEDULE

Reg. 27

FORM OF ACKNOWLEDGMENT

I, [full name, occupation, and address of depositor or lender], hereby acknowledge that I have agreed to deposit with or lend to Mr/Mrs [full name and address] being a solicitor or his wife or both of them on or from the day of 19.... the sum of upon the following terms [here fully set out the terms], and that no claim in respect of the said money will lie against the Solicitors' Fidelity Guarantee Fund and that the nature and effect of the proposed deposit or loan and of this acknowledgment have been explained to me by Mr [name of witness], who is the Secretary of the District Law Society (or who is an independent solicitor employed by me to advise me upon the proposed deposit or loan and this acknowledgment).

Dated at this day of 19....

.....

Signed by the said (depositor or lender) in the presence of—

Secretary of the
District Law Society
(or a solicitor of the Supreme Court
of New Zealand).

SECOND SCHEDULE

Reg. 56

AUDIT REPORT

(In terms of the Solicitors Audit Regulations 1969)

I, of Public Accountant/Law Society Audit Inspector, being the auditor of the Trust Accounts of Solicitor practising at hereby report pursuant to regulation 56 of the Solicitors Audit Regulations 1969 that:

1. I have completed the audit for the year ended with the 31st day of March 19....., and, pursuant to regulations 47 and 48 of those regulations in the course of the audit I completed interim examinations of the said accounts on the following dates:

(a) Date covering period from to

(b) Date covering period from to

and did complete the final audit of the said accounts on the day of 19.....

2. I have not become disqualified in terms of any of the provisions of regulations 7 and 8 of those regulations in respect of this audit.

3. The said solicitor has forwarded each month to me pursuant to regulation 36 of those regulations a certified list of balances for the previous month and copy of reconciliation statement within the periods prescribed by the said regulation except that the lists for the following months were received on the dates stated below—

Month	Date Received
.....
.....
.....

4. The said solicitor has supplied to me pursuant to regulation 39 of those regulations the certificates required 4-monthly within the period prescribed by regulation 41 of those regulations except as stated below—

5. In respect of banking accounts included in certificates supplied to me pursuant to regulation 39 of those regulations,—

(a) I have audited together with any separate books of account all banking accounts which are deemed to be separate trust accounts pursuant to regulation 60 of those regulations (except the following for which another auditor has been appointed—

(b) Audit requirements pursuant to regulation 61 of those regulations have been complied with.

6. In respect of all trust accounts of the said solicitor required to be audited by me that, subject to any comment in paragraph 7 hereunder:

(a) The said trust accounts have, in my opinion, been kept regularly and properly written up:

(b) The said trust accounts have been ready for examination whenever required by me:

(c) The said solicitor has complied with my requirements:

(d) The said solicitor has produced all unused receipt forms which, according to advice received by me, have been issued to him:

(e) From the checking and verification completed by me pursuant to regulation 51 of those regulations I am satisfied that the trust accounts are in order.

7. In my opinion the following matters in relation to the trust accounts should be communicated to the Council of the District Law Society, namely:

(Please continue on separate sheet if necessary)

Dated at this day of 19.....

.....
Auditor.

THIRD SCHEDULE

Reg. 73 (1)

REGULATIONS REVOKED

Title	Published in Statutory Regulations	
	Year	Serial No.
The Solicitors Audit Regulations 1938 ..	1938	1938/37
<i>Reprinted</i>	1959	1959/38
Amendment No. 1	1941	1941/195
Amendment No. 2	1943	1943/25
Amendment No. 3	1951	1951/260
Amendment No. 4	1958	1958/186
Amendment No. 5	1960	1960/197
Amendment No. 6	1963	1963/119
Amendment No. 7	1965	1965/5

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

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

These regulations consolidate with amendments the regulations and rules made under the Law Practitioners Act 1955.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 27 March 1969.

These regulations are administered in the Department of Justice.