



## THE SOLICITORS AUDIT REGULATIONS 1987

PAUL REEVES, Governor-General

### ORDER IN COUNCIL

At Wellington this 2nd day of November 1987

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

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**1. Title and commencement**—(1) These regulations may be cited as the Solicitors Audit Regulations 1987.

(2) These regulations shall come into force on the 1st day of April 1988.

**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 chartered accountant in public practice or who is a Law Society audit inspector:

“The Act” means the Law Practitioners Act 1982:

“Auditor” means an accountant appointed pursuant to regulation 15 of these regulations to audit the trust accounts of any solicitor:

“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 situated, and if the solicitor practises 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 inspect trust accounts:

“Solicitor” means a solicitor of the High 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 that is, when received by a solicitor, subject to the provisions of section 89 of the Act:

“Trust banking account” means a banking account that contains trust account money or into which trust account money is paid; and includes banking accounts made subject to these regulations pursuant to regulation 59 of these regulations; 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 any person employed by the solicitor (in that person’s 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 any person employed by the solicitor (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 Society stated to be in pursuance of a resolution of the Council.

## PART I

### NOTIFICATIONS BY SOLICITORS RELATING TO PRACTICE

**4. Cases where solicitor required to give notice**—(1) In every case to which this regulation applies, a solicitor shall give notice of the particulars of the case in accordance with regulation 5 of these regulations.

(2) Subject to subclause (3) of this regulation, this regulation applies in every case where a solicitor—

- (a) Commences or recommences practice, or opens a branch of his or her practice, whether alone or in partnership, and whether or not the solicitor has previously been, or remains, in practice in any other place; or
- (b) Amalgamates his or her practice or any branch of his or her practice with the practice or a branch of the practice of any other solicitor; or
- (c) Being in a partnership that is dissolved (whether on the death or retirement of a partner, or the admission of a new partner, or otherwise), continues to practise; or
- (d) Being in a practice that is dissolved, ceases to practise; or
- (e) Ceases to carry on his or her practice, or ceases to carry on any branch of his or her practice (while continuing to carry on any other branch).

(3) No notice shall be required in a case where a solicitor moves his or her practice or a branch of his or her practice from any premises to any other premises in the same city, borough, or town.

**5. Methods of giving notice**—(1) Subject to subclause (3) of this regulation, every notice required by regulation 4 of these regulations shall be in writing signed by the solicitor.

(2) Every such notice shall be given to the Secretary of the District Law Society and to the Executive Director of the New Zealand Law Society,—

- (a) In any case to which regulation 4 (2) (a) of these regulations applies, before the occurrence of the event of which notice is required to be given; and
- (b) In any other case, within 2 weeks after the occurrence of the event.

(3) A notice given and signed by a partnership firm, or signed on behalf of a firm by one of its members, shall be deemed for the purposes of this Part of these regulations to be sufficient notice by all members of that firm and any proposed new partner.

## PART II

### AUDITORS

#### *Qualification for Nomination*

**6. Accountants generally qualified**—Subject to regulations 7 to 9 of these regulations, every accountant is qualified for nomination by a solicitor as the auditor of that solicitor's trust accounts.

**7. Absolute disqualification as auditors**—(1) Subject to subclause (2) of this regulation, no accountant is qualified for nomination by a solicitor as the auditor of that solicitor's trust accounts if—

- (a) The accountant is, or at any time within the immediately preceding period of 1 year has been, a partner or an employee of the solicitor; or
- (b) The accountant is an employee of any other solicitor in practice on his or her own account or in partnership; or
- (c) The accountant is himself or herself a solicitor in practice on his or her own account or in partnership; or
- (d) The accountant is, or at any time within the immediately preceding period of 1 year has been, engaged in keeping the books of the solicitor; or
- (e) A member of the accountant's firm is, or at any time within the immediately preceding period of 1 year has been, engaged in keeping the books of the solicitor; or
- (f) An employee of the accountant is engaged in keeping the books of the solicitor.

(2) Nothing in subclause (1) of this regulation shall prevent the completion for the solicitor by an auditor, or by a partner or an employee of an auditor, 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.

**8. Persons closely related by blood or marriage may be disqualified as auditors**—If an accountant nominated by a solicitor as the auditor of that solicitor's trust accounts is so closely related by blood or marriage to that solicitor that, in the opinion of the Council of the District Law Society, the accountant's appointment or the continuation of the auditor's appointment as auditor of that solicitor's trust accounts 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.

**9. Auditor to have adequate professional indemnity insurance**—(1) Subject to subclause (2) of this regulation, no accountant shall be qualified for nomination by a solicitor as the auditor of that solicitor's trust accounts unless, in the opinion of the Council of the District Law Society, the accountant has and maintains adequate professional indemnity insurance.

(2) The Council of the District Law Society may, in respect of any particular appointment, waive the requirements of subclause (1) of this regulation.

#### *Nomination*

**10. Notices to nominate auditor**—Every notice required by any of the provisions of paragraphs (a), (b), and (c) of regulation 4 and regulation 13 of these regulations 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 that solicitor's trust accounts or (as the case may require) of the trust account specified in the notice or of that solicitor's trust accounts kept or to be kept at the branch of that solicitor's practice specified in the notice.

**11. Responsibility of solicitor when nominating auditor**—(1) 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 or herself that the accountant is qualified in terms of regulation 6 of these regulations to make such an audit, that the accountant is not disqualified in terms of regulation 7 of these regulations in respect of the audit of the trust accounts of that solicitor, and that the accountant has and maintains adequate professional indemnity insurance in terms of regulation 9 of these regulations.

(2) If the solicitor knows of any relationship between himself or herself or any of his or her partners and the auditor that should be taken into account in terms of regulation 8 of these regulations by the Council of the District Law Society in making its appointment, the solicitor shall notify the Council of that relationship.

**12. Auditor's consent to nomination required**—It shall be the duty of every solicitor, when nominating an accountant 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, together with a statement by the accountant of the minimum amount of professional indemnity insurance that the accountant maintains.

**13. 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 10 of these regulations.

**14. Appointment of firm of accountants as auditors**—(1) Notwithstanding any of the preceding provisions of this Part of these regulations, in any case where every partner in a firm of accountants is qualified for nomination by a solicitor as the auditor of that solicitor's trust accounts, the firm of accountants may be nominated and appointed as the auditors of that solicitor's trust accounts.

(2) A firm of accountants shall be no longer qualified to be the auditors of any solicitor's trust accounts if any partner of the firm ceases to be so qualified.

(3) For the purposes of the nomination of a firm of accountants to be the auditors of a solicitor's trust accounts,—

(a) Every notice referred to in regulation 10 of these regulations shall set out the name of every partner in the firm; and

(b) The references to an accountant in regulation 11 of these regulations shall be construed as references to every partner in the firm to be nominated; and

(c) Any partner of the firm may consent in writing in accordance with regulation 12 of these regulations on behalf of the firm to be nominated.

(4) In relation to any firm of accountants that are the auditors of a solicitor's trust accounts,—

- (a) Every reference in these regulations to an auditor of a solicitor's trust accounts shall be construed as including a separate reference to every partner of the firm; and
- (b) Without limiting the powers, duties, and liabilities of every partner in the firm, those powers, duties, and liabilities may be exercised, performed, and discharged by any one or more partners acting in the name and on behalf of the firm.

#### *Appointments*

**15. Method of appointment**—(1) Every appointment of an auditor shall be made by the Council of the District Law Society as agent for the New Zealand Law Society.

(2) If the Council does not approve of the accountant nominated by the solicitor, the solicitor shall forthwith submit a further nomination.

(3) 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.

**16. 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 regulation 7 or regulation 8 of these regulations 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 or her duties as auditor, or if the solicitor becomes aware that the auditor has ceased to maintain professional indemnity insurance of at least the amount nominated at the time of the auditor's appointment.

**17. Termination of appointment**—Any appointment of an auditor under regulation 15 of these regulations 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*

**18. Remuneration of auditor**—The fees payable by a solicitor to the auditor of that solicitor's trust accounts 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.

**19. 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 that solicitor's trust accounts shall be borne by the solicitor.

#### *Responsibility of Auditor*

**20. 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 or her responsibilities to the solicitor by whom the auditor's fees are payable.

### PART III

#### DUTIES OF SOLICITORS RELATING TO TRUST ACCOUNTS

##### *General Duties*

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

- (a) To keep his or her 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 or her clients.

**22. Trust account for investment in assumed name**—(1) No solicitor shall open or operate a trust account for the purposes of receiving any money for investment on behalf of any client in a name that the solicitor knows or has reason to believe is not the name by which that client is usually known, unless the solicitor, after reasonable inquiry (the proof of which shall lie on the solicitor), is satisfied that the client has no unlawful purpose for using the assumed name.

(2) Every trust account opened and operated for the purposes of receiving for investment any money on behalf of a client in an assumed name shall, subject to subclause (3) of this regulation, be clearly marked in its heading with—

- (a) The name by which the client is usually known; and
- (b) The name assumed by the client in relation to the money held or to be held in the account; and
- (c) Any other name assumed by the client in relation to money held or to be held in any other trust account of the solicitor for the purposes of investment on behalf of the client.

(3) It shall be sufficient compliance with subclause (2) of this regulation in respect of any such account if—

- (a) The solicitor keeps a register, in a form approved by the auditor of that solicitor's trust accounts, to be known as the Register of Assumed Names; and
- (b) The solicitor enters in that register the particulars specified in that subclause; and
- (c) The account is clearly marked in its heading with an appropriate reference to that entry in the register.

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

**24. Duty to produce books, etc.**—(1) 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 of such bills, 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 the auditor may reasonably require.



(2) Every solicitor shall, as and when required by the auditor, produce to the auditor all personal books and business accounts of the solicitor that the auditor may reasonably require for the purposes of the audit.

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

**26. 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.

**27. 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.

**28. Restriction on transactions with certain companies**—(1) Subject to subclause (3) of this regulation, no solicitor shall cause or permit money of any client to be deposited with or lent to 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:

(a) The solicitor:

(b) Any of the solicitor's partners:

(c) The spouse of the solicitor or of any of the solicitor's partners:

(d) Any child of the solicitor or of any of the solicitor's partners.

(2) Subject to subclause (3) of this regulation, no solicitor shall cause or permit any rent, interest, instalments, or debts due to a client to be collected by any such company.

(3) Nothing in this regulation shall prevent the operation of a solicitor's nominee company.

#### *Personal Transactions of Solicitors*

**29. 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 the solicitor's 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.

**30. 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 of the solicitor's spouse, or of them both, whether on deposit or by way of loan without security over any property, except under the following conditions:

(a) 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 to these regulations:

(b) The signature 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 or herself that the depositor or lender

fully understands the nature and effect of the proposed deposit or loan and of the acknowledgment:

- (c) Copies of the acknowledgment shall forthwith be lodged with the District Law Society and with the New Zealand Law Society and with the auditor of the solicitor's trust accounts:
- (d) 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 acknowledgment.

#### *Agencies*

**31. Agencies**—(1) 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 payment made to the solicitor, 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.

(2) Every such acknowledgment shall be produced to the auditor of the solicitor's trust account for noting, and a copy shall be forwarded to the Executive Director of the New Zealand Law Society.

(3) 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*

**32. Special receipt forms**—(1) No solicitor shall give a receipt for trust account money received by the solicitor or paid directly into the solicitor's trust banking accounts otherwise than on a form of receipt supplied to the solicitor by the New Zealand Law Society or some person authorised by it in that behalf.

(2) 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.

(3) The forms as supplied shall be used without any overprinting, 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.

(4) The New Zealand Law Society or the person authorised by it to supply forms of receipt shall keep a record of the identification marks of all 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 that auditor has been appointed to audit.

**33. Duty to use special receipt forms**—(1) Subject to the succeeding provisions of this regulation, every solicitor shall, for every sum of trust account money received by the solicitor, forthwith prepare and issue a receipt, on a form supplied to the solicitor in accordance with regulation 32 of these regulations, and shall make and retain a legible carbon duplicate of the receipt.

(2) No receipt shall be necessary where money is credited by the use of the money transfer services operated by the banks in New Zealand directly into a separate trust banking account kept by the solicitor specifically to receive such money transfers; but, in respect of such cases,—

- (a) A receipt shall be prepared for the total of the amounts received into the separate trust banking account; and
- (b) The solicitor shall arrange for adequate details and identification of all amounts so credited to be entered by the solicitor's banker in the trust banking account.

(3) Every solicitor shall retain the original receipt with the carbon duplicate of the receipt for the following payments made directly to the solicitor or to his or her 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 account controlled by the solicitor:
  - (d) Company dividends and interest and principal on company debentures, except where a receipt is requested.
- (4) It shall not be necessary to issue the original receipt unless—
- (a) The person making the payment requests a receipt; or
  - (b) The payment is made in cash.

**34. 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 forms in his or her possession to the auditor.

#### *Register of Trust Securities*

**35. Duty to keep Register of Trust Securities**—(1) Every solicitor shall keep a register, in a form approved by the auditor of that solicitor's trust accounts, 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:

- (a) The date of the receipt of the security by the solicitor:
  - (b) A description of the security, including the principal sum purporting to be secured, the rate of interest, the dates on which interest is due, and the date of maturity:
  - (c) The name of the person on whose behalf the security is held:
  - (d) The name of the person (if any) in whose favour the security is expressed to be made:
  - (e) The date when the security is delivered out of the solicitor's possession and control:
  - (f) A short narration of the disposal of the security on leaving the solicitor's possession and control, including reference to the evidence of the disposal.
- (2) Notwithstanding anything in subclause (1) of this regulation, no entry in the Register of Trust Securities shall be required in respect of—
- (a) Such trust securities as are received by the solicitor for immediate collection and conversion into money, if the money is the subject of a trust account receipt; or
  - (b) A sealed packet that is handed to a solicitor for safe custody only.

(3) The entries referred to in paragraphs (a) to (d) of subclause (1) of this regulation shall be made forthwith upon the receipt by the solicitor of any trust security; and those referred to in paragraphs (e) and (f) of that subclause shall be made forthwith upon the disposal of any trust security out of the solicitor's possession and control.

*Solicitor's Costs*

**36. Restriction on debiting of costs**—(1) 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 of those costs, 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.

(2) For the purposes of subclause (1) of this regulation, 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 or her solicitor or placed in the post addressed to that person or to his or her solicitor at his or her last known address.

**37. Costs and disbursements paid in advance**—(1) All money paid to a solicitor in respect of professional services before those services are rendered, whether described as a retainer or otherwise, shall be deemed for the purposes of these regulations to be costs and disbursements paid in advance.

(2) All such money shall be paid into a trust banking account, and shall be retained in the account until it is disbursed on the client's behalf or applied in payment of costs in accordance with these regulations.

*Monthly List of Trust Account Balances and Certificate*

**38. Duty to forward monthly list to auditor**—(1) Subject to subclause (2) of this regulation, in the month 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 or her 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 the solicitor or the firm in each trust banking account of the solicitor or the firm as at the end of the last preceding month, and shall also supply a copy of the reconciliation statement referred to in regulation 39 of these regulations.

(2) Nothing in subclause (1) of this regulation shall apply to balances in banking accounts to which regulations 59 and 60 of these regulations apply.

**39. Reconciliation statements**—Every solicitor for the time being practising on his or her own account without partners, and every firm of solicitors, shall at the end of every month cause the balance of his or her or the firm's trust banking accounts to be agreed with the balance of his or her or the firm's cashbook relating to those accounts and with the total of

the lists referred to in regulation 38 of these regulations, and shall keep in the cashbook or other appropriate place reconciliation statements showing the agreement.

**40. Certificate that list forwarded**—In each month within the period that the list referred to in regulation 38 of these regulations is to be forwarded to the auditor, the solicitor or firm shall forward to the Executive Director of the New Zealand Law Society a certificate that the list has been forwarded to the auditor.

*Four-monthly Certificate*

**41. Four-monthly statement and certificate**—(1) Every solicitor for the time being practising on his or her 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 59 and 60 of these regulations 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; and

(ii) All banking accounts not included in subparagraph (i) of this paragraph to which regulations 59 and 60 of these regulations have applied during the preceding 4 months; and

(iii) The name of every company described in regulation 28 of these regulations (other than a solicitors nominee company) in respect of which there has been a trust account ledger entry 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 that have been received by the solicitor or firm 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 regulation 35 of these regulations.

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

(3) The solicitor, or, in the case of a firm, one of the members of the firm, shall sign the certificate.

(4) The solicitor or firm shall forward each statement to the auditor within 10 working days of the date to which it refers, and shall retain a copy of the statement.

*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 or her 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 a certificate stating that fact.

**43. Cessation of practice or dissolution of partnership**—(1) Immediately after any solicitor ceases to carry on his or her practice, or a branch of his or her practice in respect of which a separate trust account is kept, it shall be the duty of the solicitor, or (as the case

may be) the administrator (within the meaning of the Administration Act 1969) of the deceased solicitor, to cause the trust accounts kept in connection with the practice, or that 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 the practice were the 31st day of March, and the auditor shall report thereon within 2 months after the date of cessation of practice.

(2) In any case where a partnership is dissolved (otherwise than by the admission of a new partner or partners), it shall be the duty of each member of the firm at the time of dissolution, if required to do so by notice in writing given within 1 month after the date of the dissolution by the retiring or any other partner or by the administrator (within the meaning of the Administration Act 1969) of the deceased partner or by the Council of the District Law Society, to cause the trust accounts kept in connection with the practice to be finally audited and reported upon pursuant to this regulation as if the date of the dissolution were the 31st day of March, and the auditor may carry out the examination in conjunction with his or her next examinations of the trust accounts in terms of regulations 47 to 49 of these regulations:

Provided that, where so required, the trust accounts shall be finally audited and reported upon within 2 months after the date of the dissolution.

## PART IV

### DUTIES OF AUDITORS

**44. General duty**—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**—(1) 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.

(2) Without limiting subclause (1) of this regulation, any auditor who ceases to maintain professional indemnity insurance of at least the amount specified at the time of the auditor's appointment shall forthwith notify the fact in writing to the Secretary of the District Law Society.

#### *Examination of Trust Accounts*

**47. At least 3 examinations in any year**—(1) Except in the case of a solicitor who is 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 3 occasions during the year.

(2) 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.

(3) The second of the examinations shall be completed not earlier than the 1st day of November, and not later than the 31st day of March.

(4) 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.

**48. Examinations where solicitor not in practice on 1 April**—The auditor of any trust account of a solicitor who is 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.

**49. 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 of these regulations.

**50. Certain matters to be checked and verified**—(1) On every examination made under regulation 47 or regulation 48 or regulation 49 of these regulations, the auditor shall complete all such sampling, checking, and verification, and follow all such appropriate audit procedures, as the auditor considers are necessary to form an opinion whether or not—

- (a) The client's funds have been dealt with in compliance with section 89 of the Law Practitioners Act 1982 throughout that period; and
  - (b) The provisions of these regulations have been complied with in respect of the trust account throughout the period under examination; and
  - (c) The trust account is generally in order.
- (2) In particular, the auditor shall—

- (a) Make such examination as the auditor considers necessary to form an opinion, in respect of all banking accounts included in the statement made pursuant to regulation 41 of these regulations, whether or not the audit requirements of regulations 59 and 60 of these regulations are complied with; and
- (b) Make such examination as the auditor considers necessary to form an opinion as to the whereabouts of all trust securities listed in the Register of Trust Securities that have not before the time of the examination passed out of the solicitor's possession or control, and shall verify all entries in the Register relating to the disposal of securities; and
- (c) Make such examination as the auditor considers necessary to verify documents of security held in the name of any solicitors nominee company; and
- (d) Make such examination as the auditor considers necessary of other documents of security or title obtained for clients and arising from transactions of the trust account.

**51. Further examinations**—The auditor may make other or further examinations at any time, either by arrangement with the solicitor or of the auditor's own motion.

**52. Death of solicitor**—(1) Subject to subclause (2) of this regulation, upon the death of any solicitor in practice on his or her own account and not in partnership, the auditor of that solicitor's trust accounts 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 Society thinks fit.

(2) 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 70 and 71 of the Act.

**53. 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 the auditor pursuant to regulation 34 of these regulations to the Secretary of the District Law Society to be disposed of as the Council of the Society thinks fit.

#### *Reports*

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

- (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 that appears to the auditor to involve dishonesty on the part of the solicitor or an employee of the solicitor; 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.

**55. 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 59 or regulation 60 of these regulations, or a final audit pursuant to regulation 43 of these regulations, the auditor shall send with a covering letter signed by himself or herself a report to the Secretary of the District Law Society in the form set out in the Second Schedule to these regulations, and shall at the same time forward a signed copy of the report to the solicitor or the executors or administrators of a deceased solicitor to whose accounts it relates.

**56. Extension of period of 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, the auditor 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.

**57. 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 V

## SOLICITOR-TRUSTEES AND SOLICITOR-ATTORNEYS

**58. Receipt for trust money**—Where a solicitor for the time being practising on his or her own account, or a firm of solicitors, actually receives any money subject to a trust, either by himself or herself or itself, or by his or her or its servants, a trust account receipt shall be issued in accordance with regulation 33 of these regulations.

**59. 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 of his or her employees; or
- (c) A solicitor, or 2 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 of the firm,—

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 89 of the Act 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 15 of these regulations.

**60. 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 59 of these regulations; and
- (b) The solicitor has authority by himself or herself or jointly with any partner or any person in his or her employ or in the employ of the firm or of any member of the firm 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 or herself by the certificate of a public accountant that the accounts of the trust estate are duly audited.

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

## PART VI

## DEFAULTS AND IRREGULARITIES

**62. 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 47 to 49 of these regulations or within such extended period as the Council of the District Law Society may approve in accordance with regulation 56 of these regulations, the Secretary of the District Law Society has not received the report prescribed by regulation 55 of these regulations, the Secretary shall forthwith report the fact to the President of the District Law Society, who shall cause the matter to be considered by the Council of the Society.

**63. Certain reports to be laid before President of Society**—Every report furnished to the Secretary of the District Law Society in accordance with regulation 54 of these regulations, and every report under regulation 55 of these regulations that includes any matter that 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.

**64. 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 63 of these regulations, stating what action, if any, has been taken in regard to that matter.

**65. 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 VII

### DISCLOSURE OF INFORMATION

**66. Duty of auditor not to disclose information**—Except in any report to the Secretary of the District Law Society or the Executive Director 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 that 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 that the auditor has obtained in the course of an audit.

**67. Liability of auditor who discloses information**—Every auditor who commits a breach of regulation 66 of these regulations shall, in addition to any penalty provided for in Part VIII of these regulations, 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.

**68. 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 or the Executive Director 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 that that

Society may require for the purpose of investigations involving its members.

**69. 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.

**70. Auditor to be agent of solicitor for certain purposes**—Every auditor shall, at all times during the continuance of his or her appointment to audit the trust accounts of any solicitor, be the agent of that solicitor to obtain from the bank at which the banking account of the money belonging to the trust accounts are kept all cheques drawn upon the banking account and to give to the bank sufficient receipts and acknowledgments for cheques so obtained.

## PART VIII

### MISCELLANEOUS PROVISIONS

**71. 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 any district disciplinary tribunal or the New Zealand Law Practitioners Disciplinary Tribunal under the Act, or of the Disciplinary Committee or the Committee of Appeal under the New Zealand Society of Accountants Act 1958.

**72. Revocations and savings**—(1) The regulations specified in the Third Schedule to these regulations are hereby revoked.

(2) The regulations revoked by subclause (1) of this regulation shall, notwithstanding their revocation, continue to apply to the auditor of any trust account for the year ending with the 31st day of March 1987 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.

(3) 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 that 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.



Reg. 55

SECOND SCHEDULE

AUDIT REPORT

(In terms of the Solicitors Audit Regulations 1986)

I (or we), ..... of ....., chartered accountant(s) in public practice being the auditor(s) of the trust accounts of ....., solicitor, practising at ..... hereby report pursuant to regulation 55 of the Solicitors Audit Regulations 1986 as follows:

1. That I (or we) have not become disqualified in terms of any of the provisions of regulations 7 to 9 of those regulations in respect of this audit.

2. That I (or we) maintain professional indemnity insurance for not less than \$ .....

3. That I (or we) have completed the audit for the year ended with the 31st day of March 19...., and, pursuant to regulation 47 of those regulations, in the course of the audit I (or we) completed interim examinations of the said accounts on the following dates:

(a) Date ..... covering the period from ..... to .....

(b) Date ..... covering the period from ..... to ..... and completed the final audit of the said accounts on the ..... day of ..... 19 .....

4. That the said solicitor has forwarded each month to me (or us) pursuant to regulation 38 of those regulations a certified list of balances for the previous month and a copy of the 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

..	..
..	..
..	.. .. ..

5. That the said solicitor has supplied to me (or us) pursuant to regulation 41 of those regulations the certificate required 4-monthly within the period prescribed by that regulation, except as stated below:

..	..	..	..	..	..	..	..
..	..	..	..	..	..	..	..

6. In respect of banking accounts included in certificates supplied to me (or us) pursuant to regulation 41 of those regulations, that—

(a) I (or we) have audited, together with any separate books of account, all banking accounts that are deemed to be separate banking accounts pursuant to regulation 59 of those regulations, except the following for which another auditor has been appointed:

..	..	..	..	..	..	..	..
..	..	..	..	..	..	..	..

(b) The audit requirements of regulation 60 of those regulations have been complied with.

7. In respect of all trust accounts of the said solicitor required to be audited by me (or us), that, subject to any comment in clause 9 of this report,—

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

(b) The said trust accounts have been ready for examination whenever required by me (or us); and

(c) The said solicitor has complied with my (or our) requirements; and

SECOND SCHEDULE—continued

(d) The said solicitor has produced all unused receipt forms that, according to advice received by me (or us), have been issued to the solicitor; and

(e) From the sampling, checking, and verification completed by me (or us) pursuant to regulation 50 of those regulations I am (or we are) of the opinion that—

(i) The client's funds have been dealt with in compliance with section 89 of the Law Practitioners Act 1982 throughout that period; and

(ii) The provisions of those regulations have been complied with throughout the period covered by this report; and

(iii) The accounts are generally in order—  
except as stated below:

.. .. .  
.. .. .

8. That the said solicitor does not operate a solicitors nominee company.  
or

That the said solicitor operates a solicitors nominee company (or solicitors nominee companies) incorporated under the following name(s):

.. .. .  
.. .. .

and I am (or we are) of the opinion that the provisions of those regulations, so far as they apply to solicitors nominee companies, have been complied with in respect of that company (or each of those companies) during the period covered by this report, except as stated below:

.. .. .  
.. .. .  
.. .. .

9. In my (or our) opinion the following matters in relation to the trust accounts should be communicated to the Council of the District Law Society, namely:

.. .. .  
.. .. .  
.. .. .

Dated at this day of 19 .. ..

Auditor(s).

\_\_\_\_\_

Reg. 72 (1)

**THIRD SCHEDULE**  
**REGULATIONS REVOKED**

Title	Serial Number
The Solicitors Audit Regulations 1969 .. ..	1969/53
The Solicitors Audit Regulations 1969, Amendment No. 1 .. ..	1973/266
The Solicitors Audit Regulations 1969, Amendment No. 2 .. ..	1975/215
The Solicitors Audit Regulations 1969, Amendment No. 3 .. ..	1978/119
The Solicitors Audit Regulations 1969, Amendment No. 4 .. ..	1981/358

MARIE SHROFF,  
Clerk of the Executive Council.

EXPLANATORY NOTE

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

The regulations consolidate, amend, and replace the Solicitors Audit Regulations 1969, consequent upon the enactment of the Law Practitioners Act 1982.

The principal changes are as follows:

*Regulation 9* is new. It provides that every accountant who is appointed as the auditor of a solicitor's trust accounts shall have and maintain adequate professional indemnity insurance, unless the Council of the District Law Society waives this requirement in a particular case.

*Regulation 22* is also new. It makes special provision for cases where a solicitor receives money for investment on behalf of a client who wishes to use an assumed name in connection with the investment. It follows broadly the recommendations of the Report of the Committee of Inquiry into Solicitors Nominee Companies (the Richardson Report).

In such a case, the solicitor must satisfy himself or herself that the client has some lawful reason for wishing to use the assumed name. The account must bear the client's usual name as well as the assumed name, and any other assumed name used by the client in respect of any other money held by the solicitor for investment on behalf of the client. Alternatively, that information may be recorded in a Register of Assumed Names, so long as the account bears an appropriate reference to the entry in the register.

*Regulation 37* makes it clear that all money paid in advance to a solicitor shall be retained in a trust account until drawn for the authorised purposes.

*Regulation 41* requires special mention to be made by a solicitor in his or her four-monthly statement to every company in respect of which the principal financial benefit or the effective control is vested directly or indirectly in the solicitor, his or her spouse, or any of his or her children, or any of his or her partners, their spouses, or children, if a trust account ledger entry has been made in respect of that company during the preceding 4 months.

*The Second Schedule* sets out a new form of audit report. Most of the changes are made necessary by changes in the regulations themselves, but, in addition, auditors are now required to refer specifically to solicitors nominee companies in their reports.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 5 November 1987.

These regulations are administered in the Department of Justice.