



# Lawyers Trust Accounting Guidelines

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1.	Introduction .....	4
2.	Definitions .....	6
3.	What is a trust account? .....	7
4.	What is trust money .....	9
5.	Setting up a trust bank account .....	10
6.	Responsibilities of lawyers .....	11
7.	Manual and electronic trust accounting systems .....	12
8.	Trust account records .....	13
9.	Trust account control account/cash book .....	15
10.	Trust account ledger .....	16
11.	Trust account receipt transactions .....	18
12.	Trust account payments .....	21
13.	Trust account journals (funds transfer between clients) .....	25
14.	Trust account errors and overdrafts .....	27
15.	Withdrawing fees from trust account funds held .....	28
16.	Fees and invoices .....	30
17.	Personal transactions .....	32
18.	Trust account reconciliations .....	33
19.	Remaining or unexplained trust account balances .....	37
20.	Interest bearing deposits .....	38
21.	Foreign currency accounts .....	41
22.	Controlled client bank accounts .....	42
23.	Reporting requirements .....	44
24.	Valuable property .....	47

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25. Investments under s 322 of the Lawyers and Conveyancers Act 2006 .....	48
26. Estates and trusts .....	49
27. Attorneys for sole practitioners .....	50
28. Internal controls .....	51
29. Computer system .....	52
30. Retention of trust account records .....	55
31. Closing or merging a firm .....	56
32. Miscellaneous .....	57

# 1. Introduction

- 1.1 The New Zealand Law Society (Law Society) has released guidelines for lawyers and their accounting staff to assist in the management of client funds and valuable property, as well as the administration of trust accounts within law practices.
- 1.2 While adherence to these guidelines is not mandatory, legal practitioners are strongly encouraged to incorporate them into their practices. Doing so can significantly enhance operational efficiency, mitigate exposure to issues, and foster compliance with the Lawyers and Conveyancers Act 2006 and the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.
- 1.3 The Law Society guidelines aim to provide information and context on various fundamental processes related to lawyers' trust accounting. Although they may not comprehensively cover every aspect, the guidelines are crafted to offer essential guidance on key facets of trust accounting. Lawyers and their accounting staff can leverage these guidelines for tasks such as record-keeping, reconciliation, and compliance within the pertinent legal and regulatory framework.
- 1.4 Compliance with these guidelines ensures that law firms uphold good practices and fulfil their legal and ethical obligations concerning client funds and trust accounts. Legal practitioners should be familiar with relevant legislation, keeping a copy of the Regulations for quick reference alongside these guidelines, to conduct financial and accounting activities in alignment with the law and professional standards. This approach safeguards the integrity of legal services and maintains client trust.
- 1.5 The recommendation to seek guidance from trusted senior practitioner colleagues, the Inspectorate, or individuals with expertise in legal accounting is crucial when establishing or maintaining a trust account system. Given the critical nature of trust accounting in legal practice, errors or negligence can result in serious consequences, including legal and ethical violations. Guidance from experienced professionals and experts in the field ensures that trust accounting procedures are established and maintained correctly.
- 1.6 In essence, these guidelines serve to furnish lawyers and their accounting staff with information and context regarding fundamental processes in lawyers' trust accounting. Such processes are integral to ensuring compliance with legal and ethical standards when managing funds held in trust on behalf of clients.
- 1.7 Here's a breakdown of several of the key points mentioned in the guidelines:
  - **Establishment and Operation of a Designated Trust Bank Account:** It is a requirement to maintain a separate and designated bank account for trust funds. This account is used exclusively for holding client funds in trust. These guidelines provide limited details on how to open, operate, and maintain this account, ensuring it remains separate from the law firm's business operating accounts.
  - **Implementation of a Receipting and Payment System:** A robust system for recording deposits into the trust bank account and making payments from it is

crucial. This system helps ensure that all client funds are accurately tracked and that withdrawals are only made for authorised purposes, such as client expenses or legal fees. Proper documentation and record-keeping are vital in this regard.

- **Operating a Journal System:** The guidelines provide information on how to maintain a journal system for tracking the movement of funds within the trust account. This journal system ensures that funds are appropriately allocated and that the balance in the trust account remains accurate. The journal system does not impact the bank account but serves as an internal tracking mechanism.
- **Operating a Set of Ledgers:** Detailed ledgers must be kept that record the underlying and various client entitlements to the monies held in the trust bank account. This involves documenting the specific client, the amount held in trust for each client, and any transactions affecting their respective funds. Ledgers play a crucial role in demonstrating transparency and accountability in managing client funds.

1.8 If a law firm's trust accounting system deviates from these guidelines in any way, it is recommended to consult with the Inspectorate [inspectorate@lawsociety.org.nz](mailto:inspectorate@lawsociety.org.nz).

## 2. Definitions

2.1 In these guidelines, unless the context otherwise requires –

- ‘Act’ means the Lawyers and Conveyancers Act 2006 and section references are to the Act.
- ‘Regulations’ means the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 and regulation references are to the regulations.
- ‘RCCC’ means the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and rules references are to the rules.
- ‘FTRA’ means the Financial Transactions Reporting Act 1996.
- ‘AML/CFT’ means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
- ‘Principal’ means a sole practitioner, a partner, or a director of a law firm.
- Terms defined in the Act or Regulations have the same meaning for the purposes of these guidelines.
- Law Society is the New Zealand Law Society Te Kāhui Ture o Aotearoa.

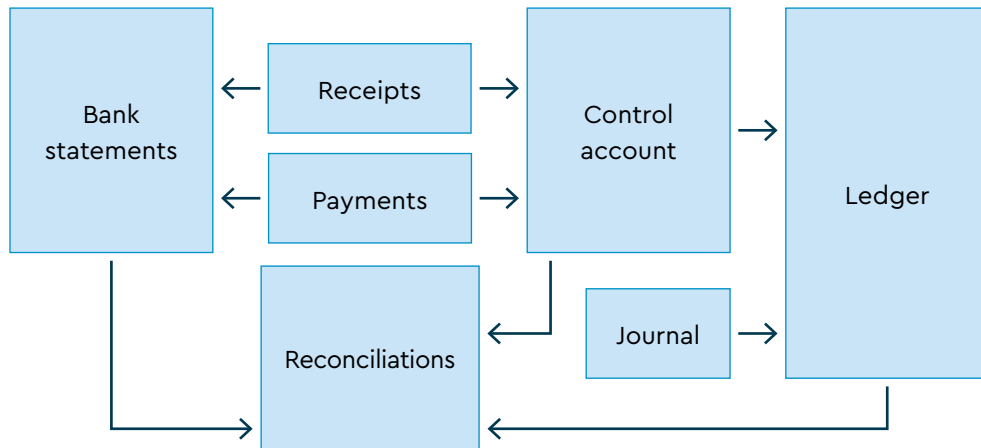
## 3. What is a trust account?

3.1 A trust account, in the context of a legal practice in New Zealand, is a specialised bank account designated for holding and managing client funds related to legal matters. Please note the following are the key points:

- **Definition:** A trust bank account as defined in [Section 6](#), encompasses funds held in a bank in New Zealand that is specifically in the name of a legal practice and is designated as a trust account. This definition applies to both individual legal practitioners and incorporated law firms.
- **Inclusion of IBD:** An interest-bearing deposit account (IBD) is also considered a trust account in this context.
- **Trust Relationship:** Broadly speaking, a trust account signifies a bank account that is established to maintain a trust relationship. This means that the funds held in this account are not the property of the legal practitioner or the law firm but belong to clients or third parties and are held in trust by the lawyer.
- **Components of a Trust Account:** The term 'trust account' also encompasses the records and elements associated with managing the trust funds. These components include receipts, payments, journals, client ledgers, and a control account.
- **Control Account:** The control account serves as a cumulative record, confirming that the aggregate total of the various ledgers accurately reflects the funds in the trust account. It is essentially a cross-check to ensure that the balances are correctly calculated. It is a compulsory element of trust accounting.
- **Reconciliation:** The bank account that holds the trust funds should align with the trust account's control balance, and vice versa. However, there may be timing differences due to transactions initiated but not yet recorded in both accounts. For example, a deposit may be made to the trust bank account, but the lawyer has not yet determined which client should receive the credit. Similarly, a client might have paid cash to the lawyer, but the funds have not yet been deposited into the trust bank account. Both of these examples would be recorded in the reconciliation documents.

3.2 Managing trust accounts with diligence and accuracy is of utmost importance in the legal profession to ensure transparency, maintain the integrity of client funds, and adhere to legal and ethical standards. Failure to do so can have serious legal and professional consequences.

- 3.3 The diagram below demonstrates the interplay of these functions for a practice that does not operate an IBD facility.



- 3.4 Trust accounting is a crucial aspect of managing funds held on behalf of clients, and it's governed by specific rules and regulations to ensure transparency and protect the interests of clients. The following are some key points:

- **Maintaining Adequate Funds:** Trust accounts must always have enough money to cover the various client entitlements. This means that the balance in the trust bank account should be sufficient to always meet the obligations to clients.
- **Control Account and Client Ledgers:** Trust accounting involves the use of a control account, which is essentially a running total of all transactions related to the trust account. Additionally, individual client ledgers are maintained to track specific client transactions. These client ledgers should mirror the changes in the control account.
- **Manual vs. Computerised Systems:** While the basic principles of trust accounting remain the same, most practices today use computerised trust accounting systems due to their efficiency and accuracy. Manual systems are generally only suitable for practices with very low transaction volumes and typically not for firm's operating a LINZ licence.
- **Volume of Transactions:** It is recommended that for any trust account with a transaction volume beyond minimal, a computerised trust accounting system is expected to be in place. This is because computerised systems can handle larger volumes more efficiently and with greater accuracy.
- **Opening a New Practice:** When opening a new legal practice and establishing a trust account or an IBD account, there are various considerations to take into account. The Law Society has published a checklist [lawsociety.org.nz/professional-practice/practice-briefings/checklist-for-practices-considering-opening-a-trust-account](https://lawsociety.org.nz/professional-practice/practice-briefings/checklist-for-practices-considering-opening-a-trust-account) to ensure that the fundamental requirements of trust accounting are met. This checklist includes items related to account setup, documentation, and compliance with legal and regulatory requirements.



## 4. What is trust money

- 4.1 Trust money can be defined as a legal and regulatory concept that pertains to the handling of funds in a trust relationship. Trust money refers to all funds that, when received by a legal practice, are subject to the provisions of Section 110 of the Act.
- 4.2 Broadly speaking, trust money are funds held in trust on behalf of clients.
- 4.3 The exchange of assets and non-fungible tokens (such as Bitcoin) is also covered by and subject to the trust accounting regime. This means that when legal practices are involved in transactions or holding assets, including digital assets like cryptocurrencies, on behalf of clients, they are obligated to adhere to the rules and regulations governing trust accounting.
- 4.4 Trust account money is unique and can be identified by four key characteristics which entail that any trust held funds are:
1. Retained by a practice
  2. Kept for the benefit of a person
  3. Managed according to the instructions of that person
  4. Cannot be utilised for any purpose except as specified by that owner
- 4.5 Please also refer to: [legislation.govt.nz/act/public/2006/0001/latest/DLM366140.html](https://legislation.govt.nz/act/public/2006/0001/latest/DLM366140.html) and [legislation.govt.nz/regulation/public/2008/0183/latest/DLM1387287.html](https://legislation.govt.nz/regulation/public/2008/0183/latest/DLM1387287.html)

## 5. Setting up a trust bank account

- 5.1 All trust monies held on behalf of clients by a legal practice must be retained in a trust bank account. This account must be held at a bank in New Zealand. The choice of bank is crucial, and it should be a financial institution familiar with setting up lawyers' trust accounts. Not all banks operate trust bank accounts.
- 5.2 Setting up a trust account with a bank can be a specialised process, and it is essential to ensure that it is established correctly from the outset. This includes proper designation and documentation.
- 5.3 Section 299 to 303 of the Act outlines the legal requirements for banks to 'nominate' trust accounts. This means that the bank should formally recognise and designate the account as a trust account, in line with regulatory requirements.

## 6. Responsibilities of lawyers

- 6.1 The Practitioners' responsibility for client money includes the following key points:
- To handle client's assets under their control strictly in accordance with the client's instructions, or as required by law.
  - To keep the client's money in a trust bank account until it is disbursed as instructed.
  - To ensure that the client's money earns interest when reasonable to do so.
  - To maintain up-to-date, secure trust account records that clearly indicate the amount of trust account money held for each client.
  - To provide each client with a comprehensive and understandable statement detailing all trust money held for the client, all transactions in the client's account, and the balance of the client's account.
- 6.2 Furthermore, practitioners are responsible for the actions of their partners and staff concerning client money. They should establish and enforce proper controls and procedures within their practice to ensure compliance with these responsibilities.
- 6.3 Each trust account should have a designated trust account supervisor who carries a special responsibility for the administration and security of the trust account. However, it's important to note that the responsibilities and liabilities of all partners or other directors are not diminished by the existence of a trust account supervisor.

## 7. Manual and electronic trust accounting systems

- 7.1 The fundamentals of trust accounting remain consistent, regardless of whether there is a manual approach or computerised legal practice management software is utilised.
- 7.2 While a few practices with very low volumes and no LINZ licence may find a manual system suitable, this is discouraged. Many sole practitioners and firms now opt for a computerised trust accounting.
- 7.3 As a result, it is anticipated that the majority of legal professionals will choose specialised software designed to meet their trust accounting requirements. Any trustworthy trust accounting software package should seamlessly incorporate essential functions, features, records, and robust reporting capabilities as integral components of its design.
- 7.4 Firms are encouraged to do their own due diligence on any software they wish to use. The Law Society does not endorse or approve software in New Zealand.

## 8. Trust account records

8.1 There are strict requirements for maintaining trust account records in legal practices, ensuring transparency and security. The key points of reg 11 include:

- **Up-to-Date Records:** Trust account records must be kept current, meaning they should reflect the most recent and accurate information regarding the trust monies held for each client.
- **Clear Identification of Trust Monies:** Trust account records must clearly show the client's name and amount of trust monies held on trust. This ensures that the funds allocated to specific clients are readily identifiable and distinguishable.
- **Security Against Alteration or Deletion:** Trust account records should be as secure as reasonably practicable to prevent retrospective alteration or deletion. This is crucial to maintain the integrity of the records and prevent unauthorised changes.
- **Accurate Date Entries:** All entries in the primary records, such as receipts, payments, and journals, must be accurately dated. Proper dating is essential for tracking the chronology of financial transactions.
- **Adequate References:** Entries should include adequate references that clearly identify their source and destination.
- **Supporting Information:** Entries should be supported by enough additional information to enable traceability. This means that there should be documentation or details that allow anyone reviewing the records to understand the context and purpose of each transaction.

8.2 The records outlined in these guidelines are vital for maintaining a fundamental set of trust account records:

- Trust account receipt book (or an equivalent receipting system)
- Trust account payments records (requisition forms or equivalent, along with retention of completed bank batch reports)
- Trust control account (also known as a cash book)
- Trust account journal
- Client ledger balances list
- Transaction supporting documentation for payments and journals.
- IBD client ledgers and control account (if applicable)
- Records of valuable property received and held.

- 8.3** It is important to note that the above list is not exhaustive, and client files are considered part of the definition of trust account records. Supporting documentation for payments and journals is expected to be frequently stored in the client file, whether in hard copy or electronic format.

## 9. Trust account control account/cash book

9.1 The control account is compulsory and serves as the link within the system, connecting:

- the entries of receipts and payments documented in the bank statements with
- the client ledger of the trust account and
- the reconciliations conducted at the end of each month.

9.2 A sample control account format is as follows:

Date	Client Name	File Ref	Payer/Payee/Narration (brief)	Trn Ref	Payment	Receipt	Balance
1/07/XX			Balance B/F				\$49,324.48
1/07/XX	Smith J	1296/1	ASB Bank net loan advance	2301		\$127,500.00	\$176,824.48
1/07/XX	Smith J	1296/1	J Smith contribution towards purchase	2302		\$24,300.00	\$201,124.48
1/07/XX	Brown F Est	3222/1	M Brown cash held by deceased at death	2303		\$47.50	\$201,171.98
1/07/XX	Brown F Est	3222/1	New Motors payment for sale of car	2304		\$37,440.59	\$238,612.57
1/07/XX	Johnson T	5110/4	T Johnson payment of invoice HC989	2305		\$755.00	\$239,367.57
1/07/XX	Smith J	1296/1	Home & Partners settlement 20 Box Street, Merryvale	3470	\$150,420.75		\$88,946.82
1/07/XX	Meyers Trust	3564/2	Village Carpenters Ltd – Invoice 234 re repairs	3471	\$458.00		\$88,488.82
1/07/XX	Smith J	1296/1	Auckland City Council third instalment rates	3472	\$534.78		\$87,954.04
2/07/XX	Jenkins R	7888/10	R Jenkins payment of costs and disbursements – fee invoice 1234	2306		\$75.00	\$88,029.04
2/01/XX	Kelly H	3225/2	IRD payment provisional tax due for the period ending XX/XX/XXXX	3473	\$1,544.27		\$86,484.77
3/07/XX	Evans G	5478/3	G Evans payment of fees invoice 7890	2307		\$39.95	\$86,524.72
3/07/XX	Jones H	4589/1	First National nett deposit funds due on sale of 40 Circle Street, Willowvale	2308		\$12,300.00	\$98,824.72
3/07/XX	Brown F Est	3222/1	AMEX funds to settle outstanding balance	30718	\$15,633.95		\$83,190.77
4/07/XX	Robinson A	1258/8	A Robinson balance trust funds held	3464	\$60.00		\$83,130.77
4/07/XX	Smythe J	4587/2	J Smythe balance trust funds held	40718	\$100.00		\$83,030.77
4/07/XX	Grills P	7894/5	Home Real Estate Limited balance deposit held	2295	\$3,842.75		\$79,188.02
28/07/XX	Brown F Est	3222/1	Downtown Auctions proceeds sale oak dining table	2399		\$750.00	\$79,938.02
28/07/XX	Meyers Trust	3564/2	S Read payment on account rental arrears as per payment plan	2400		\$1,090.00	\$81,028.02
28/07/XX	Kelly H	3225/2	K Lyall interest due on overdue payment	2401		\$260.00	\$81,288.02
28/07/XX	Smith M Est	1234/5	Westpac Bank balance bank account proceeds	2402		\$3,756.43	\$85,044.45
					\$172,594.50	\$208,314.47	

**Note:** Each transaction must be assigned a distinct reference allowing it to be traced forwards and backwards. It should also include a precise and detailed description, clearly documenting the essential points or the basis of client authority for the payment.

## 10. Trust account ledger

- 10.1 The purpose of the trust account ledgers is to document the entitlement of each client to the funds held in the trust bank account. These ledgers may consist of one or more sub-accounts, often referred to as projects or matters, for each client.
- 10.2 Each project or matter meticulously records all inflows and outflows of funds related to that client, highlighting the available balance designated for the specific purpose of the matter. Maintaining accuracy in the trust account ledgers is crucial.
- 10.3 In its simplest form, trust account ledgers may be a collection of ruled cards or pages in a book, organised typically in alphabetical order of client names. Inactive cards are segregated into a separate section, also arranged alphabetically.
- 10.4 When a client or groups of clients have diverse individual interests, it is imperative for the practice to account for the money related to each individual interest separately, with payments recorded as debits and receipts as credits.
- 10.5 For instance, if a practice represents a developer client and receives multiple deposits from purchasers, these funds would be receipted to the developer client ledger but recorded under that ledger in distinct matters.

It is important to keep accurate records of who the client is. A couple is a separate client to an individual as are Estates, Trusts, and companies. All should be treated separately, and appropriate client authorities and files held for all.

- 10.6 Most trust account computer systems accommodate such distinctions, categorising them as follows:
  - Single client, single retainer = single ledger (also known as a matter)
  - Single client, multiple retainers = single matter with multiple projects
  - Multiple parties, single retainer = single matter with multiple parties to obtain authority from
- 10.7 Computerised systems offer trust account records for each 'matter,' whereas a manual system would have a card for each matter. It's worth emphasising that a manual system is suitable only for a practice with a relatively small number of clients with funds in the trust account, and is discouraged in firms operating LINZ licences.
- 10.8 Entries in the client ledger are made simultaneously with those in the control account/cash book. These entries share the same references, such as receipt and payment numbers, facilitating cross-referencing. The client ledger should provide a more detailed narration, starting with the payer/payee's name and a comprehensive explanation of the purpose of the funds received or disbursed. This detailed narration is crucial for client reporting.
- 10.9 All entries in the trust account ledger and other accounting records contributing to these entries must display accurate dates. Additionally, cross-references should be included, identifying their source or destination, enabling each entry to be traced backward or forward as needed.



10.10 A sample format is as follows:

**Howard & Co**

**Client/Matter:** 1296/1

**Client:** J Smith

**Re:** Purchase of 20 Box Street

**Card No. 1**

Date	Transaction Details	Ref	Debit (out)	Credit (in)	Balance
1/07/XX	ASB Bank mortgage advance	2301*		\$127,500.00	\$127,500.00
1/07/XX	J Smith cash contribution towards purchase	2302*		\$24,300.00	\$151,800.00
1/07/XX	Horne & Partners settlement purchase 20 Box Street	3470**	\$150,420.75		\$1,379.25
1/07/XX	Auckland City Council third instalment rates	3472**	\$534.78		\$844.47
3/07/XX	Howard & Co fees & disbs Invoice HC934	J27***	\$820		\$24.47

\* = Receipt No.

\*\* = Payment No.

\*\*\* = Journal No.

10.11 As each entry is made, the resulting balance of the client's funds is entered in the right-hand 'Balance' column. When all entries are made and the balance is correctly calculated, the total of the list of client balances should be the same as the control account/cash book balance.

## 11. Trust account receipt transactions

### Recording of trust funds received into a trust account (receipts)

**11.1** To ensure compliance with the Act and Regulations when handling trust funds, adhere to the following procedures:

- Record trust funds in the trust account's receipting system. In manual systems, use a receipt book (obtained from a supplier who has been approved by the Law Society). Computerised systems often capture essential details from payer-provided information in bank statements, such as matter number and name. This can also be done through the completion of a manual or electronic receipt requisition form or a similar communication from the author.
- Trust funds are generally deposited directly into the trust bank account. It is essential to quickly recognise any funds received and enter these deposits into the trust receipting system. To guarantee timely processing, it is advisable to download bank statements daily.
- Occasionally, deposits may lack sufficient information to determine the payer's identity and the appropriate credit recipient. In such cases, treat these funds as adjusting items, acknowledging their receipt but delaying immediate receipting (outstanding lodgement). Alternatively, allocate them to a suspense or clearing ledger.
- Posting unknown deposits to a suspense account carries the risk of being overlooked during reconciliation. Therefore, it is recommended to include a printout of the suspense ledger (or a copy of the ledger card in manual systems) as part of the monthly reconciliation supporting documentation, even when the suspense ledger has a zero balance.
- In cases of multiple outstanding deposits, it is essential to reconcile the suspense ledger each month to understand the composition of the balance. If necessary, contact the bank to obtain additional details about the unidentified deposits.
- If the payee cannot be identified the firm can request the bank return the funds to the originating bank account. Alternatively, unclaimed funds should be remitted to the Inland Revenue. For further guidance, please consult the practice briefing.

[lawsociety.org.nz/professional-practice/practice-briefings/amendments-to-the-unclaimed-money-act](https://lawsociety.org.nz/professional-practice/practice-briefings/amendments-to-the-unclaimed-money-act) »

### One person should be responsible for processing cash received

**11.2** Where possible assigning a sole individual to handle the receipt of cash is preferable. This person should be responsible for receiving and documenting cash while ensuring its secure storage until it is ready for banking.

- 11.3** Irrespective of whether a receipt is explicitly requested by the payer, it is vital to generate receipts for all cash received. In the case of a manual receipt book, the top copy of receipts should be retained within the book if they are not issued.
- 11.4** A receipt must always be provided to the payer in instances of cash transactions or upon the payer's request. Legal software systems designed for this purpose often have the capability to generate a hard copy receipt.
- 11.5** To eliminate any ambiguity regarding the received amount, cash should be counted in the presence of the payer as it is received. Adhering to best practices, the cash counting process should involve two staff members and the payer, with both the payer and staff members signing the receipt to confirm the exact amount received.
- 11.6** Receipts must follow a predetermined format outlined in Regulation 13 and should be completed in full. This entails providing comprehensive information about the involved parties and the nature of the payment.

### Trust account receipts

- 11.7** Trust account receipts, whether in a computerised or manual format, should encompass the following from regulation 13: the words "official receipt form for trust moneys," the firm's name, a unique receipt number, and designated spaces for the following information to be input:
- Date of issue
  - Amount (both in words and digits)
  - Client's name/the person the funds are to be credited to
  - Purpose of the transaction
  - Payment method (e.g., direct credit or cash)
  - who the money is received from
  - signature for firm's authorised representative
- 11.8** For manual trust account receipt books, it is imperative to procure them from an approved supplier endorsed by the Law Society. These books are structured to generate duplicate receipts, with one copy for the client and another for the firm. The firm's copy remains within the receipt book.

Date:	<i>Note 1</i>	20XX	RECEIVED the sum of:	<b>IB171029</b>
				Receipt issued by
			dollars and	<b>[Name of Practice]</b>
			cents	
From:	<i>Note 2</i>	For credit:	<i>Note 3</i>	Official receipt form for trust moneys
Being:	<i>Note 4</i>			
Cash	<input type="checkbox"/>	Code	<i>Note 6</i>	\$
Cheque	<input type="checkbox"/>	Refs	<i>Note 7</i>	c
Direct Credit	<input type="checkbox"/>		Cashier	

**Notes:**

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

**Cash monies received**

- 11.9 All trust funds received must be deposited into your trust bank account. It is essential to promptly bank trust money, preferably daily when practical.
- 11.10 Ensure that trust money is kept separate from other funds until it is deposited.
- 11.11 For automatic payments, direct credits, or other electronic transfers, provide the payer with accurate details of the trust bank account to be credited. Clients should be informed to include the purpose of the payment for clarity on the trust bank account statement. Note that stopping automatic payments can be challenging without a specified final payment date.
- 11.12 Receipts do not need to be issued unless the payment is made in cash or if the payer explicitly requests one. The record in the trust bank account statement is typically deemed sufficient.
- 11.13 In most cases, electronically transferred funds are considered cleared upon receipt. However, it's important to be cautious as banks can reverse funds obtained through direct debits from a client's account. Exercise due diligence when making payments related to electronically received trust money and consult your bank in case of uncertainty or potential fund reversals. This is especially true of internationally deposited cheques. It has been known for American banks to reverse international cheques up to 6 months later.

## 12. Trust account payments

### Electronic banking and internal controls

- 12.1** With the discontinuation of cheques, trust account payments are exclusively conducted through electronic banking. It is crucial to prioritise the security of the electronic banking system, ensuring access is restricted solely through passwords, and implementing appropriate documented processes within the firm.
- 12.2** An effective electronic banking system designed for trust funds should integrate sufficient protective measures. These may include:
- Ideally, the withdrawal of funds from the trust account should involve a two-step process: one individual initiating the transaction and another individual authorising it. Larger firms often mandate dual authorisations before funds can be released.
  - System access should be secured through passwords, with each individual's password kept confidential.
  - The system should offer functionality for storing payee details, particularly for regular payments.
  - To enhance transparency and security, the system should generate reports documenting any changes made to electronically stored details. These reports should display the old and new bank account numbers, along with the date and individual responsible for the modification. Regular reviews of these reports are recommended.
- 12.3** Internal controls for a firm's payments should encompass the following measures:

### Client Bank Account Numbers Acquisition Policy

- 12.4** We strongly recommend that every firm:
- Establishes a policy dictating how and when client bank account numbers are obtained.
  - Encourage all clients to furnish documented evidence of bank account numbers early in the retainer, preferably in person. Acceptable evidence may include a bank statement, photocopy, screenshot of a phone app, or an ATM printout.
  - Discourages the verbal or handwritten provision of bank account numbers, as it may lead to errors or subsequent disputes, a stance supported by the Law Society.

### Verification of Payee Bank Account Details

- 12.5** We strongly recommend that every firm:
- Verifies payee bank account details by cross-referencing them with documentary evidence such as bank statements, printed bank deposit slips, ATM printouts, or equivalent records.

- Where payee account details are received by email the firm should conduct 'voice verification'. This means contacting the payee on already known details (not relying on the information in the email) to confirm the details received. This check should be clearly noted on file including sufficient detail to evidence who and how the check was made.

### Policy for supporting documentation presented to payment authoriser and retention of information

- 12.6** Ensure full supporting documentation for both the payment being made and the payee bank account number is provided to the individual authorising the payment. Documenting what is required sets expectations. When the transaction is authorised, the bank provides a final/processed confirmation on screen. The confirmation is a primary record for the payment transaction. It will be uniquely numbered and records the payee bank account the funds were transferred to, and the individual who authorised the transfer. Banks maintain these records on line for only some months, hence it is important that they are printed or saved electronically by the practice.
- 12.7** The Inspectorate conducts examinations of trust account payments and may ask firms to provide proof of payee bank account numbers as well as finalised bank batch/confirmation reports.

These reviews often focus on the aspects of regulation 12(6) which include:

- There is money in the client ledger to cover the payment.
- The recipient/payee bank account number aligns with documented evidence.
- The necessary internal authorisation has been obtained.
- There is valid client authority or instruction from all required parties, and that the payment was executed in accordance with such instructions.

### Mandatory client authority

- 12.8** Client authorisation is a prerequisite for any payment made from a client's trust funds (section 110, regulation 12(6)).
- 12.9** As a general guideline, explicit instructions carry more weight than implicit or default authority. An example of default authority can be from the client's acceptance of the engagement letter, containing a clause regarding fee deduction. However, a client may later rescind this authority to deduct fees.
- 12.10** When dealing with substantial payments or when the payee is not evident from the retainer's nature, it is advisable to obtain and retain explicit authority, with email trails serving as one example of securing and documenting such authorisation.

- 12.11** The authority provider is determined by the client's identity, some examples being:
- In the case of a couple as the client, approval from both is necessary for the transaction.
  - For a client that is an estate, approval from all executors is required.
- 12.12** Written authorisation for any payments should be kept on file. When acting on non-written instructions (e.g., verbal), a file note must be created to ensure adherence to Regulation 12(6)(b). Sending a letter or email to the client confirming the payment is recommended, especially when the instruction is not implicit in other documentation.
- 12.13** Reference to the client authority should be included as the final part of the transaction narration in such cases.
- 12.14** Situations may be exempt from requiring express client authority include payments to the client, transfers to the client's interest-bearing deposit account, or instances where authority is implied in other documents, such as a will or property purchase agreement. However, explicit authority from all clients is always preferred, especially when the firm is on notice that there are ongoing concerns in the matter. Any standing authorities should be kept in the client's permanent file for accessibility. Authorities related to individual payments should be numbered in line with the corresponding entries and filed chronologically along with supporting documentation.
- 12.15** Given that the Inspectorate often reviews sampled payments, firms should be capable of tracing payments back to their underlying authorities. When establishing a payment filing system, including the underlying authorities, consideration should be given to traceability (Regulation 11(1)). In addition to client files, maintaining separate accounting files containing all documents presented to the individual authorising payments is preferable.
- 12.16** Payments should only be made from a client's ledger if it holds sufficient funds available to make the payment. A client ledger may hold sufficient funds but they may be ring fenced for a specific purpose and so not available for all payments. For example funds may be held pursuant to an undertaking. As such these funds may not be used for the firm's fees etc.
- 12.17** An undertaking to retain monies serves as a pertinent example where a ledger might seemingly have 'sufficient' funds, yet they may not be readily 'available'.

### Responsibility for preparing electronic payments

- 12.18** Payments from the trust account are exclusively facilitated through electronic banking transfers.
- 12.19** If possible, only one person and a back-up should be responsible for preparing electronic payments.
- 12.20** Direct payment from an interest-bearing deposit account is not permissible; instead, funds must be withdrawn and deposited into the trust account before any payment can be made.

## Payments to institutions

- 12.21** When paying an institution electronically, use the reference field to provide sufficient detail so the recipient can identify your client. Most institutions will provide guidance as to the reference numbers to be provided.
- 12.22** In some instances (e.g., Ministry of Justice and Immigration New Zealand) institutions are not able to accept some payments electronically. In such circumstances the firm often pays the payee by its own credit card and then is reimbursed from the client's ledger in the trust account.

## Delegated authority for authorising electronic payments

- 12.23** A firm policy should be implemented to ensure that, whenever feasible, only a principal or director of the firm has the authority to authorise electronic payments from the trust account.
- 12.24** In cases where a firm grants this authority to employees:
- Authorisation should be exclusively granted to suitably knowledgeable and experienced employees for situations where a principal or director is unavailable. Procedures should support this authority, ensuring that the released payments are accurate and valid.
  - Whenever possible, banking arrangements should involve the participation of a second suitable individual. The establishment of the bank mandate should include provisions for joint signatories, such as a staff lawyer authorised to act jointly with the practice manager.
  - In the scenario of a sole practitioner, consideration may be given to the attorney appointed under section 44 Schedule 1 of the Act as a preferred back up.
- 12.25** Procedures should mandate a thorough review of appropriate documentation to support payments made under delegated authority. Immediate review of all payments should occur upon the principal's return to duties.
- 12.26** The individual responsible for preparing a payment batch must ensure that the designated authoriser possesses adequate information and evidence regarding the payment.
- 12.27** Firms should recognise that any delegated authority carries inherent risks. Principals or directors must take steps to minimise this risk, which may include extending the professional indemnity insurance policy to cover employee dishonesty.



## 13. Trust account journals (funds transfer between clients)

- 13.1** A trust account journal acts as a log for specific transactions. These transactions can include the movement of funds between two clients, the shifting of funds between two tasks or projects of a single client, and the transfer of fees from client tasks or projects to the firm's interest in the trust ledger. This is often automatically generated in digital systems.
- 13.2** The movement of funds between clients requires a journal entry to be recorded, as mandated by Regulation 12(6). Before completing the transfer, proof of the authority to move funds must be acquired and kept. Journal entries offer a trackable record of these transfers. For example, when one client provides funds to be transferred to another client's account, the first step is to debit the payer client's account before carrying out the transfer to the recipient client's account.
- 13.3** The firm's accounting system should be capable of generating or retaining a comprehensive record of all posted journals. This is often referred to as a 'journal transaction report'. For manual systems, a 'journal book' can be procured from office stationery suppliers.
- Journals should be numbered in sequence and should include the date, a unique reference number for cross-referencing, the names and numbers of debited and credited ledger accounts, the amount, and a detailed description explaining the purpose of the transfer.
- 13.4** In cases where funds are moved between different clients, the description should cite the underlying authority for the transfer, unless it is implied by the nature of the transaction. As journal entries can affect client entitlement to trust funds, they should be subject to the same level of internal control as payments.
- 13.5** Even though many digital systems do not have formal authorisation requirements, it is crucial for the Trust Account Supervisor to regularly review the journal transaction report, ideally on a monthly basis, before submitting the monthly trust account certificate. This regularity allows for the swift identification and rectification of errors or irregularities.
- 13.6** In summary, journal entries should be numbered in sequence, signed by the appropriate approving authority, and filed for easy reference.
- 13.7** The transfer of funds between clients necessitates the recording of a journal entry, as stipulated by Regulation 12(6). Prior to making the transfer, evidence of the authority to transfer funds must be obtained and retained.

**13.8 Note:**

The Inspectorate commonly samples journals during trust account reviews and may request samples along with supporting documentation. Therefore, careful consideration should be given to the traceability of journal requisitions and the underlying authorities during the filing setup.

A sample format of a journal is as follows:

Date	File Ref	Transaction Details	Trn Ref	Debit (out)	Credit (in)
3/07/XX	1296/1	J Smith	27	\$820.00	
	0001/01	Firm's Interest in Trust (FIT)	27		\$820.00
Payment of invoice HC934 transferred as authorised by client email on 2/07/XX					
4/07/XX	1478/1	P & R Groves	28	\$127,500.00	
	1479/1	R Groves	28		\$127,500.00
Settlement of 56 Idle Way as per Deed dated 30/06/XX					

## 14. Trust account errors and overdraws

- 14.1** The trust bank account is a mechanism for safeguarding client funds. It should never be in a state of overdraft or be in danger of falling into overdraft. For instance, by making a payment against a 'pending' deposit where there's a chance it might not be received.
- 14.2** Part of the requirement to ensure a trust account is not overdrawn is the requirement for meticulous management and constant monitoring, as outlined in regulation 6.
- 14.3** In the event of an overdraft occurring in the trust account, it must be corrected without delay. Until the correction is made, any overdrawn balance must be covered by the practice's own funds, as per regulation 6.
- 14.4** Also if an overdraft does occur, it must be reported as an exception to the Law Society in the monthly regulation 17 certificate.

## 15. Withdrawing fees from trust account funds held

- 15.1** You are not permitted to deduct fees from a client's trust money unless you have provided that client with an account for the services carried out (Regulation 9(1)) and the client has authorised the deduction (Section 110).
- 15.2** To prevent grievances associated with deducted fees, it is essential that the 'fees by deduction' clause is explicitly outlined. The recommended wording for this clause can be found in the Law Society template examples on the website [lawsociety.org.nz/professional-practice/client-care-and-complaints/client-care](https://lawsociety.org.nz/professional-practice/client-care-and-complaints/client-care) »
- 15.3** Before starting work, each client must be provided with information on the main aspects of client care and service (RCCC 1.7), including the requirements of RCCC 3.4(a):
- the criteria for charging fees
  - the timing of fee charges
  - the due date for fee payment and
  - whether the fee may be deducted from funds held in trust.
- 15.4** Furthermore, a fee invoice must always be created and shown/sent/delivered to the client in advance of deducting fees.
- 15.5** The funds to cover fees can only be received in advance if they are held in the client's ledger in the firm trust account. Deductions in respect of fees cannot be made from funds held unless:
- the work has been completed
  - the client has given authority for the deduction; and
  - an invoice detailing the fees to be deducted has been provided to the client (Regulation 9) before or immediately after the fees are deducted.
- 15.6** Common methods of taking are:
- posting a journal entry debiting the invoice to the client's ledger account and crediting the firm's interest in trust (float) ledger; or
  - paying the amount of the invoice from the trust bank account into the practice bank account by electronic payment. The withdrawal is debited to the client ledger.
- 15.7** Once legal services have been provided and an invoice has been issued, a firm may request that its fees be paid directly into its practice bank account. This is allowed if there is no trust component to the payment.

- 15.8** For example, if the invoice amounts to \$2,000.00, a client can be instructed to pay \$2,000.00 into the firm's practice bank account. However, if the firm requests \$3,000.00 but the invoice is only for \$2,000.00, then the full \$3,000.00 must be directed to the trust account first. Following that, the \$2,000.00 can be transferred out to the practice upon client instructions. The remaining \$1,000.00 must remain in the trust account until further instructions are received.

## 16. Fees and invoices

- 16.1 Clients must have access to copies of invoices and trust account statements. In many practices, this is typically straightforward due to their legal practice management software. However, in a manual system, these documents must be either printed and filed in hard copy or saved as .pdf and organised accordingly. Many firms now file electronically.
- 16.2 The filing system can be arranged alphabetically by client or by invoice number/date order, with attached relevant trust account statements. A duplicate should also be placed in the client file. Invoices should be sequentially numbered and cross-referenced to the ledger entries. Electronic systems can meet this requirement by generating a report from the system ([Regulation 9](#)).
- 16.3 Disbursements must be clearly explained in the client care and service information provided at the outset of the retainer. These charges are distinct and must be separately disclosed on the firm's invoices.
- 16.4 Disbursements represent actual payments made by firms to third parties on behalf of their clients. Firms receive invoices from third parties, and disbursements are passed on at cost, without any markup. Disbursements should be stated inclusive of GST on the firm's invoice.
- 16.5 In 2023 a LCRO decision [LCRO-176-2022](#) compared and applied the dictionary definition of the words 'expense' and 'disbursement' and found that in each case the term relates to costs required to be paid to a third party in the course of completing a client's instructions.
- 16.6 While agency fees are becoming less common, they can only be charged when a genuine agency relationship with commercial substance exists. An example is an independent (arm's length) third party being contracted for LINZ searches.
- 16.7 The RCCC state that 'a lawyer must not charge a client more than a fee that is fair and reasonable for the services provided, considering the interests of both client and lawyer.' Meaning a fee cannot be excessive or misleading.
- 16.8 Any item that is not paid to a third party (e.g., an office service fee or overhead expense recovery) should be separately disclosed in the terms of engagement as an extension to the practitioners or firm's fees. ([Rule 3.2](#)). Such charges should be positioned in the invoice under a 'sundry fee' as they cannot be intermingled, or capable of being confused, with disbursements. They form part of a skill set specific to the firm or practitioner when providing legal services. Included in this category may be items such as internal photocopying, tolls, faxes etc not readily identifiable as an external payment.
- 16.9 This should reflect in your invoices and read 'sundry fee' but also be included under the heading of your professional fee summary.
- 16.10 Prior to the LCRO decision (LCRO 176/2022) firms included office expenses on invoices. This is no longer acceptable.

**16.11** Examples of potentially misleading practices include:

- Placing an 'agency fee' or other firm charge under the title disbursement, when no agent is involved.
- Charging an additional fee (such as an agency fee), without prior disclosure in the terms of engagement.
- Describing an office service fee or expense recovery that is not an actual cost to the practice as a disbursement or expense. Only payments to an arm's length third party for legitimate reasons, such as an identifiable courier charge, may be termed as a disbursement or expense.

**16.12** Inappropriately charging can breach elements of the RCCC, including:

- Rule 3.4(a): Providing advance information on the basis of fee charging.
- Rule 9: Principles of charging.
- Rule 11.1: Prohibition of misleading or deceptive practices.

**16.13** More detail and background are available in the following practice briefing: [lawsociety.org.nz/professional-practice/practice-briefings/open-and-transparent-billing](https://lawsociety.org.nz/professional-practice/practice-briefings/open-and-transparent-billing) <sup>21</sup>

## 17. Personal transactions

- 17.1 Regulation 8 expressly prohibits using the trust account for personal transactions of partners, directors, their families, or employees.
- 17.2 However, an exemption exists for property or investment transactions. These transactions must be handled with the same diligence as those for a client. This includes a dedicated file, providing client care information, and retaining authorities for transactions.



## 18. Trust account reconciliations

### Importance of regular reconciliations

- 18.1** It is essential, and required, to regularly update and reconcile all trust account records (regulation 14).
- 18.2** We suggest the following practices be adhered to and incorporated into the management of trust account operations:
- Keep your receipt and payment records current.
  - Transfer entries from the primary records (receipts, electronic payment records, and journals) to the client ledgers.
  - Refresh the ledgers and calculate the end-of-day balance for any ledger accounts with new entries (for manual systems).
  - Look into and investigate any debit balances or other irregularities.
  - Ensure the total ledger balances, the control account/cash book balance, and the bank balance are all in agreement. If they don't match, there's an error that needs to be identified and corrected immediately.
- 18.3** We recommended for firms to reconcile the trust account daily. Ideally, this task should be performed or reviewed by someone other than the trust account administrator.
- 18.4** Computerised systems usually allow for daily reconciliations. Even manual systems can be reconciled daily with ease, as most transactions are real-time (electronic). In most cases, the control account/cash book will match the bank account balance.
- 18.5** If there are items to be reconciled, such as deposits not yet receipted or funds not yet banked, these need to be accounted for.
- 18.6** Daily reconciliations should ideally be reviewed by someone other than the person who prepared them. It's a good practice to provide each principal with a copy of the day's transactions for the authors they supervise.
- 18.7** Entries in the primary records should be made promptly and in strict chronological order.
- 18.8** In case of an error in a manual system, the incorrect entry should be crossed out and the correct version written next to it. Each entry should be visible, and the use of correction fluid or tape should not be used.

### Monthly reconciliations

- 18.9** Monthly Reconciliations of all trust accounts are a regulatory requirement (Regulation 14 and 17), and it is essential to reconcile each one at the end of every month. The primary purposes of reconciliation include verifying that there are adequate funds in the trust bank account to cover clients' ledger balances. It also ensures that clients' balances accurately show exactly what they are entitled to.

**18.10** The reconciliation must explicitly highlight reconciling items causing differences among the trust account balance (as per the manual or computerised system), the control account/cash book, and the bank statement balance. These monthly reconciliations should be retained as work papers to serve as a permanent record, providing evidence of the reconciliation process. The Inspectorate will, on occasion, request these documents and conduct a trust account review.

**18.11** Supporting records to be produced, reviewed, and retained include:

- Control account/Cash book summary (opening balance, plus receipts, less payments = closing balance). The evidence of each will assist the previous month's summary showing the closing balance, along with the current months receipts and payments report.
- Bank reconciliation.
- Copy of month-end trust account bank statement.
- Details of reconciling items e.g., unbanked monies or deposits not receipted.
- List of client balances (credits must in total equal the control account closing balance). The report is often called a "Trust Trial Balance."
- Monthly journal transaction report (or journal book). This should be compared with requisitions to check that all journals have been approved by the relevant author. In a large firm this can be challenging, and alternative checking strategies should be devised.
- If operating a suspense account, a copy of the ledger/s reconciled to the month end balance. Ideally suspense accounts will be reduced to nil monthly but should still be checked.
- A listing of balances not moved for three months, often incorrectly called a dormant or stale balance report.
- Similar documentation and process must be undertaken for the IBD and/or term deposits.

**18.12** For both computerised and manual systems, it is recommended to scan the monthly reconciliation workpapers to create a permanent record, ensuring backup in case of system failure or loss of paper records.

**18.13** All monthly reconciliations, except for December, must be completed by the 10th working day of the following month. The December reconciliation should be finished by the 15th working day in January.

**18.14** Reconciliations are mandatory for all trust bank accounts, including foreign exchange, call, and term deposit accounts. It is recommended that client-controlled bank accounts are also reviewed and included.

## Monthly reconciliation procedures

**18.15** A suggested monthly reconciliation procedure for a simple manual/computerised accounting system is as follows:

- Obtain the final trust bank account statement/s to the month-end. This is the last day of the month not the last working day.
- Write up/post any entries originating in the final bank statement to the control account/cash book and enter/post the entries to the relevant client's ledger, to the last day of the month.
- Ensure all journal entries for the month have been fully processed and the ledgers updated.
- Prepare a list of all client balances using all of the client ledgers at month end. Ensure that total corresponds with the month-end control account/cash book balance/total.
- Check all entries in the bank statements to the corresponding records in your control account/cash book, ticking both records in the process and note any apparent errors for correction.
- Total the payments and receipt columns of your control account/cash book for the month. In a computerised system the payments and receipts reports will generate these totals.
- Prepare a control account/cash book reconciliation for the month (opening balance plus total receipts minus payments = closing balance)
- Prepare the bank reconciliation and ensure that the bank reconciliation agrees with the control account/cash book balance.

**18.16** If the control account/cash book disagrees with the ledger total, this should be investigated and corrected immediately. Sometimes a figure may have been entered on the wrong side of the ledger, or missed entirely, resulting in a discrepancy of half or double the amount you are looking for.

**18.17** Identifying errors becomes more difficult if there are two or more errors. This is one reason why the trust account should be reconciled regularly (daily is recommended), so any errors will only be in the most recent entries.

**18.18** Ascertain and list the outstanding items present on the control account/cash book but not the bank statements (such as unbanked monies or deposits not receipted) and any adjusting items brought forward from the previous month's bank reconciliation. For example, a deposit on 31 July credited by the bank on 1 August, will be an outstanding item and will feature in the bank reconciliation on 31 July.

Note: if there are unbanked cheques as adjusting items these must be immediately addressed. They should be cancelled, and the funds credited to the relevant client ledger. You should then contact the client to obtain a bank account that the funds may be paid to.

**18.19** If operating a suspense account for unknown electronic deposits, the account should be reviewed and reconciled monthly at minimum.

**18.20** A sample month-end bank reconciliation is as follows:

**Sample bank reconciliation as at 31 July 20XX**

**Howard & Co**

<b>Control Account Summary Reconciliation (or Cash Book)</b>	\$49,324.48
<b>Opening Balance as at 01/07/20XX</b>	\$49,324.48
Add Receipts as per control account (Cash Book) totals for month	\$208,314.47
	\$257,638.95
Less Payments as per control account (Cash Book) totals for month	\$172,594.50
<b>Closing Balance as at 31/07/20XX</b>	<b>\$85,044.45</b>

<b>Bank Reconciliation</b>	
Balance as per bank statement as at 31/07/XX	\$82,944.45
Add deposits not banked:	
Receipt 512401 banked 01/08/XX	\$2,100.00
	<b>\$85,044.45</b>

<b>Client Ledger Balances as at 31/07/20XX</b>		<b>Last Activity</b>	<b>Balance</b>
4785/1	PL Smith	01/01/20XX	\$1,500.00
3222/1	Estate F Brown	31/07/20XX	\$85.00
3692/2	BG Green	01/10/20XX	\$125.00
2525/1	H Jones	18/05/20XX	\$55,000.00
8887/1	Dr E Who	13/07/20XX	\$15,000.00
5423/3	Y Yan	19/07/20XX	\$2,233.00
2525/8	SE Zu	29/04/20XX	\$2,550.00
0001/1	Firms Interest in Trust	31/07/20XX	\$8,551.45
			<b>\$85,044.45</b>

**18.21** Most software packages include a 'Last Activity' field for the date, it is crucial to integrate this information into a manual system. This integration aids in identifying any inactive residual balances and balances that need reporting as per Regulation 12(7). Most software packages have the capability to produce lists of inactive balances via reports often known as 'Dormant or Stale Balance Reports.'

**18.22** It is vital to scrutinize the client ledger listing to pinpoint funds that might require placement on IBD. Pursuant to Section 114 and the duty to earn interest. See Chapter 20.

**18.23** Firms should ensure that the end-of-month reconciliations and working papers they complete are easily accessible and comprehensible to Section 44 attorneys if required.

## 19. Remaining or unexplained trust account balances

- 19.1** A key responsibility when holding client funds on trust is to complete retainers in a timely manner with residual client funds being transferred to the client or paid as the client instructs.
- 19.2** As part of the file closing procedures, it is imperative to inform the client and disburse any remaining trust funds, as outlined in Section 110(1)(b) of the Act and Regulation 12(7). Regular reporting, as mandated by Regulation 12(7), serves the purpose of reminding the client about the existing monies and ensures that instructions are either sustained or renewed.
- 19.3** Regulation 12(7) specifically requires firms to provide each client with a complete and understandable statement detailing all trust money held on their behalf. This reporting obligation must be fulfilled at the end of the matter or intervals not exceeding 12 months.
- 19.4** Failure to engage in regular reporting may result in a client changing their address or email, leading to a potential loss of contact. In such instances, the firm should exert reasonable efforts to locate the client, bearing the costs of these efforts. The definition of 'reasonable effort' is contingent on factors such as the last communication date and the value of funds held. For instance, reporting on a minimal value may warrant less extensive efforts compared to a larger balance where Regulation 12(7) reporting has been neglected.
- 19.5** When a residual balance persists, it could stem from authorised but unpaid disbursements or discrepancies in cost or disbursement estimations. It is crucial to trace its origin and appropriately reimburse the client. Deductions from such funds are permissible only when backed by an invoiced amount authorised by the client, as mentioned before (Section 110; Regulation 9).
- 19.6** For minimal balances, the Law Society recommends electronic payment to the client, assuming the firm already possesses the client's bank account details. An email notification to the client confirming the residual payment fulfils the reporting requirement.
- 19.7** Regular reviews of remaining balances are advised, and we recommend including this information in the monthly reconciliation workpapers. This inclusion allows questions to be asked by the TAS who can follow up on current client instructions and reporting. Where you cannot find the client whose money you hold, and you do not have authority to pay the money to any other person, you may follow the procedure set out in Section 337(2) to (4) of the Act. However, remitting funds under this section should not become the default position.
- 19.8** Please refer to the following practice briefing: [Law Society | Amendments to the Unclaimed Money Act 1971 What this means for lawyers' trust accounts](#) »
- 19.9** The Law Society recommends that any remaining trust account balance is dealt with promptly so as to avoid such situations.

## 20. Interest bearing deposits

- 20.1** Section 114 places a duty on the firm to ensure that trust money accrues interest for the benefit of clients whenever practicable or unless the client instructs otherwise.
- 20.2** Upon receiving trust funds, a decision must be made regarding whether to place them in an Interest-Bearing Deposit Account (IBD Account). Factors such as the current interest rate, the amount of funds, and the timeframe the firm is expected to hold the funds should be considered monthly.
- 20.3** In cases where the anticipated interest is minimal compared to administrative costs, it may be deemed “not reasonable or practical” to deposit the trust money into an IBD Account.
- 20.4** An IBD facility functions as a trust account within a trust account. It requires keeping track of client IBD ledgers and control accounts for each IBD bank account and therefore, must be reconciled. Term deposits, usually for a more extended period, should have a separate control account.

It's crucial to do a monthly reconciliation between the bank's list and the IBD client ledger list in the trust accounting system, whether it's computerised or manual.

- 20.5** All IBD bank accounts must be linked to nominated trust bank accounts for two primary reasons:
- IBD deposits can exclusively originate from the nominated trust account.
  - IBD withdrawals can solely be directed to the nominated trust account.
- 20.6** It's important to note that deposits and withdrawals cannot be executed from or to any bank account other than the designated trust account. If your IBD allows you to pay to alternative accounts you should have this changed.

### IBD funds must be held with a bank

- 20.7** Section 110(1) of the Act mandates the holding of trust monies at a 'bank' in New Zealand (refer to section 6 for definition). Not all “banks” in New Zealand operate nominated trust accounts. An essential feature is contained in sections 301 and 302 of the Act. These sections allow banks to not pay interest on the trust account. Instead the bank can retain 40% of any potential interest in lieu of bank charges. The remaining is paid to the 'Special Fund' to fund community law centers etc.

Notably, a building society does not align with the definition of a bank, rendering the maintenance of trust accounts with building societies a violation of Section 110(1) of the Act.

## IBD funds – Lawyers Fidelity Fund

- 20.8** Client funds held in a nominated trust account, or associated IBD, are usually covered by the Lawyers Fidelity Fund. Where the client gives explicit instructions to invest funds elsewhere the funds are not covered by the Lawyers Fidelity Fund, per section 332 of the Act. Clients must be advised of this as well under RCCC 3.4(c).
- 20.9** Each client must have its own separate IBD Account. The bank records must show that there are separate client accounts, grouped so that all the IBD Accounts are within the control and responsibility of the practice.
- 20.10** The Banks and Inland Revenue have a variety of information requirements around getting to know your client (KYC), FATCA (United States Foreign Account Tax Compliance Act), AML/CFT (Anti-Money Laundering and Countering Financing of Terrorism), AEOI (Automatic Exchange of Information) and CRS (Common Reporting Standard). Therefore, consideration needs to be given to receiving all required detail from your clients prior to placing the monies on IBD.
- 20.11** The banks' facilities provide for:
- Interest to be compounded or paid to a nominated trust account each month/quarter. It is recommended that practices choose the option to compound interest as this will save both time and multiple trust account entries, as well as additional internal controls.
  - Resident Withholding Tax (RWT) can be set for either the practitioner or the bank to be responsible. It is recommended that the bank be responsible. When the bank sends you Resident Withholding Tax certificates, you must send them on to the relevant clients for action by them in respect of their tax returns.
  - Most banks provide a facility to deduct your commission and, by arrangement, will credit it directly to your office account at the end of each month.
  - Deposits and withdrawals are usually affected by electronic transfer.
  - The bank credits each IBD Account with interest as it accrues.
  - At month end, the bank produces (or you can download) a list of bulk deposit balances. The list includes other information such as interest credited or accrued that month.
  - On 31 March each year, the bank may issue Resident Withholding Tax Certificates. These certificates must be forwarded by the practitioner to the client.
  - Most banks provide annual client reports which either need to be requested or may be printable directly from your on-line banking.

## IBD Account Ledgers

- 20.12** You must open a separate section of ledger cards or computer equivalent to record clients' funds held in IBD accounts. The trust account ledger should include a control account that mirrors the total value of the IBD account. The IBD account ledger provides a record of all trust money held in IBD Accounts for clients. The ledger must be reconciled with the month end information from the bank.

**20.13** Where funds are held on both call and term deposit on behalf of clients, you should maintain separate ledgers for each, i.e. separate control accounts and client ledgers.

**20.14** You should make entries to the control account and client ledger accounts simultaneously (see below).

**20.15** The IBD ledger must be reconciled at the end of each month in a similar manner to the trust account (refer paragraph 18.11). The month end information from the bank should periodically be compared to the practice's records as to client names and value of investment. This should be done for both on call and term deposit balances.

**Example Interest Bearing Deposit Control Account**

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

**Example Interest Bearing Deposit Client Ledger**

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

**Notes:**

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



## 21. Foreign currency accounts

**21.1** Law firms operating in New Zealand have the option to establish foreign currency accounts at various banks within the country. This facility proves advantageous as it allows the receipt of money without exposure to exchange rate fluctuations until required. We note Section 110(1)(a) of the Act mandates that client money should be 'paid into a bank in New Zealand to a general or separate trust account' (of the firm).

**21.2** Consequently, a law firm can establish a foreign currency trust account, for instance, to receive Japanese Yen, and maintain the funds in that currency based on client instructions, especially when contractual obligations involve payments in Japanese Yen.

**21.3** Key considerations include:

- Each foreign currency trust account must be integrated into the nominated trust bank account arrangements at a New Zealand bank, unless opened as a client's independent bank account (evaluation of whether this account is a 'controlled' bank account of the firm should be done, referring to guideline 22). Therefore, a separate trust account will be opened for each currency held, accompanied by a separate ledger for each respective client.
- Bank statements for each foreign currency trust bank account must be acquired and kept in the trust account records.
- Trust accounting software packages usually allow separate control accounts and ledgers to be opened for each foreign currency bank account. This means each account can be reconciled. For currencies with a substantial number of digits, such as the Japanese Yen, it's important to verify the software's compatibility. If required, maintaining manual (preferably in Excel) records for that currency is an alternative.
- The obligation to earn interest on trust account balances, as outlined in Section 114 of the Act, extends to foreign currency balances. However, the interest rates and administrative requirements for these currencies may significantly differ from New Zealand currency. In terms of Section 114(b), earning interest may not be 'reasonable or practicable' unless the amounts involved are large or intended for a long period. It may be prudent to discuss the issue with the client.

**21.4** All the normal trust accounting requirements apply in the same way as to New Zealand currency trust accounts. These include, but are not limited to:

- The account is designated as a trust account.
- Monthly reconciliation and certification procedures.
- Client authorisation processes for payments.
- Adherence to the duty of maintaining proper records.
- Compliance with client reporting requirements outlined in Regulation 12(7).

## 22. Controlled client bank accounts

**22.1** In addition to funds held in the trust account, a firm may bear responsibility for funds under its control beyond the trust account, such as those held in client bank accounts. These client bank accounts are distinct from the trust account and are maintained in the client's name.

Lawyers' obligations in relation to receiving money and property and trust accounts are contained in Part 6 of the Act.

**22.2** The Act does not include a definition of "controlled bank account". Section 110 of the Act, however, says that:

- (1) A practitioner who, in the course of his or her practice, receives money for, or on behalf of, any person-
  - (a) must ensure that the money is paid promptly into a bank in New Zealand to a general or separate trust account ...

**22.3** For the purposes of [s 110, subs \(3\)\(b\)](#) the Act states that a practitioner is deemed to have **received** money belonging to another person in circumstances which include the practitioner **taking control** of money belonging to that person.

**22.4** The Law Society considers that a practitioner has taken control of money belonging to another person if they have made a payment out of a controlled account. Under s 110(1) of the Act the practitioner must therefore first make the payment out of the controlled account to their trust account, or the trust account of a related person or entity, before the money is paid to the intended recipient from that trust account.

**22.5** Abuse of controlled bank accounts has been the subject of significant financial misappropriations. Careful consideration should be given to why the funds must remain 'at large,' unable to be transferred to the trust account, and thus utilise the supervision, framework, and ledger maintenance provided by that system.

**22.6** The authority to operate a client's bank account typically manifests through powers of attorney, trusteeships, or signing authorities, often executed through online banking, bank cards, or equivalent means.

**22.7** When administering a client's bank account, proper accounting, reporting, and record-keeping must adhere to the same standards required for other trust funds (Sections 110-112 of the Act; Regulation 11).

**22.8** Firms are advised to maintain a register of such appointments. It is also recommended the firm require authors to regularly certify, preferably on a quarterly basis, that they have no undisclosed controlled bank accounts.

**22.9** Controlled bank accounts may exist without the knowledge of principals or the Trust Account Supervisor, particularly when an author exercises control over a client's affairs in cases where the client lacks capacity and family support. The firm should prioritise the supervision of such assets.

- 22.10** If an author misuses a controlled client bank account, the firm may be held liable to indemnify losses as if the funds were lost from their designated trust account.
- 22.11** Protocols should be established to ensure that all controlled bank accounts and similar arrangements are promptly reported to an independent third party. If there is no one independent to the firm available then it is recommended to report to another principal within the firm or, in the case of a sole practitioner, their power of attorney. Transparency is crucial to dispel any notions of impropriety.
- 22.12** Regular and randomly selected peer file reviews can assist in identifying any undisclosed retainer arrangements, fostering accountability within the firm.
- 22.13** The Law Society also strongly recommends that law firms that function without a trust account and maintain “controlled accounts” should appoint a representative from within the firm to undergo Trust Account Supervisor training. Following this training, these firms should uphold the same elevated standards for their “controlled accounts” as those applied to trust accounts.
- 22.14** The following is considered good practice in relation to administering a ‘controlled account’:
- Appoint a responsible person to ascertain whether there are any controlled bank accounts within a firm and keep a register. They would also collect the quarterly staff certifications.
  - Practitioners without a trust account should also advise the Law Society that they have ‘controlled accounts’ and provide the Law Society Inspectorate a listing of those ‘controlled accounts’ annually to [inspectorate@lawsociety.org.nz](mailto:inspectorate@lawsociety.org.nz). This could be done at the same time as filing the annual s 112 certification due by 31 March.
  - Every ‘controlled account’ is reconciled at least monthly, following the same process as required for trust accounts. These reconciliations should form part of the Trust Account Supervisors monthly review process.
  - Firms may consider if it is appropriate in the circumstances to pay all the monies from the controlled bank account into the firm’s trust account or the trust account of a ‘related entity’ (as per the definition of related entity in s 6 of the Act).
  - When authority is needed for another person’s bank account, it is recommended that the client’s authority is obtained for there to be two signatories on the account. For sole practitioners, the other signatory could be the section 44 attorney or alternate.

## 23. Reporting requirements

### Reporting to clients

- 23.1** Regulation 12(7) requires that each client must receive a 'complete and understandable statement of all trust money handled' including the balance held. This relates to any money held in trust on behalf of the client ie trust account, IBD and term deposit balances and when applicable, controlled bank accounts and foreign exchange accounts.
- 23.2** This means firms should issue reporting statements to clients:
- in respect of ongoing investment transactions, at intervals of not more than 12 months; and
  - in respect of all transactions that are not completed within 12 months, at intervals of not more than 12 months; and
  - in respect of all other transactions, promptly after or prior to the completion of the transactions.
- 23.3** Depending on the engagement, more frequent reporting might be deemed appropriate. The reports should encompass opening (or last reported) balances, all transactions during the reporting period, and closing balances. Any balances in IBD or term deposits should also be detailed.
- 23.4** Most systems will produce a stale/dormant/inactive balance report. It is recommended this report is reviewed by the TAS regular and administration staff asked to complete the reporting.
- 23.5** One way of meeting reporting requirements may include emailing a printout or export of a client's ledger, as long as it is complete and understandable.
- 23.6** Third-party reports like RWT certificates or accountant's financial statements do not absolve lawyers of their reporting obligations. All reports must be sent directly to the client unless specific authorisation is given for third-party delivery.
- 23.7** When a client's understanding is limited, efforts should be made to communicate with a representative who can act in the client's interest. It is crucial to avoid situations where statements or invoices are solely received by a firm's author or associated person.
- 23.8** There is a Lawyers Complaints Review Officer decision LCRO 319/2012, which emphasised that reporting is a strict duty, and omissions are not treated lightly. The decision underscores the importance of addressing stale balances and providing annual reports to clients, with unsatisfactory conduct findings being applicable to all partners.

## Monthly and quarterly certificates to the Law Society

- 23.9** You are obligated under regulation 17 to submit a monthly certification to the Law Society preferably once the trust accounting for the month has been finalised and reconciled. This certification includes checking if trust account records are correct and if the Regulations are followed.
- 23.10** Submission of certificates is to be done through the Law Society website by the 10th working day of each month, except for January, where 15 working days are permitted. In case you cannot respond with a 'Yes' to a question, indicate 'No' and provide an explanation.
- 23.11** If a banking or third-party error occurs and is promptly rectified, it does not necessitate reporting as an exception in the monthly certificate. However, should an error transpire on the last day of the month and remain unaddressed before the close of business on that day, it should be reported as an exception, accompanied by an explanation.
- 23.12** A list of matters to check before submitting the monthly certificate is on the Law Society website at [lawsociety.org.nz/professional-practice/legal-practice/trust-account-management/trust-account-certificates-faqs](https://lawsociety.org.nz/professional-practice/legal-practice/trust-account-management/trust-account-certificates-faqs) <sup>21</sup>
- 23.13** Each firm is obligated, to submit a quarterly certificate detailing the status of all private or single-lender loans managed by the firm when there exists a duty to collect interest. Consequently, firms engaged in interest collection should maintain records facilitating the completion of these certifications.
- 23.14** It is essential to recognise that the Financial Markets Authority serves as the regulatory body for contributory and nominee company lending.

The quarterly certificate is contained within the monthly certificate when filing online.

## Reporting of suspected money laundering transactions

- 23.15** Money laundering is the method by which people attempt to disguise the illegal origins of the proceeds of crime to protect and enjoy the assets. Domestic and international evidence suggests that using gatekeepers (such as lawyers and conveyancers) is a way for criminals to create a false perception of legitimately acquired wealth.
- 23.16** The Anti Money Laundering/Counter Financing of Terrorism (AML/CFT) Act is activities-based. Only lawyers who undertake specified activities will need to develop a programme to ensure they comply with the requirements in the Act.
- 23.17** You must comply with the AML/CFT Act by ensuring you identify, understand, and can assess the risks of money laundering and terrorist financing to your business. You must implement an AML/ CFT programme to manage these risks.
- 23.18** AML/CFT programmes will vary between firms according to each firm's judgement about how to best manage their assessed risks.

- 23.19** Lawyers need to know their customers. Before commencing captured activities, they need to conduct customer due diligence (CDD) according to the level of risk posed by their customers. CDD is mandatory.
- 23.20** A lawyer will be in breach of the AML/CFT Act if they unable to complete CDD and continue to undertake a captured activity or transaction for that client.
- 23.21** The Department of Internal Affairs (DIA) is the supervisor monitoring lawyers' compliance with the AML/CFT Act. Lawyers have the additional task of ensuring they uphold legal professional privilege.
- 23.22** The DIA have guidelines and resources to help law firms, to develop robust awareness of the risks posed by money laundering and financing of terrorism activities and provide prompts on what to think about when developing programmes to manage these risks.
- 23.23** The DIA resources are available at [dia.govt.nz/AML-CFT-Information-for-Lawyers-and-Conveyancers#LAW](https://dia.govt.nz/AML-CFT-Information-for-Lawyers-and-Conveyancers#LAW) ↗
- 23.24** Some practices prefer to reduce their exposure to cash handling risks and responsibilities by stipulating that cash deposits must be made directly into their bank accounts. It is important to be aware that legal professionals are obligated to report any instances of cash offers or attempts at payment.
- 23.25** Additionally, depositing funds directly into the bank does not absolve the firm of its statutory duty to report such occurrences. It is crucial for firms to possess copies of police guidelines and to establish comprehensive policies and procedures to address any potential situations that may arise.
- 23.26** Copies of the Police guidelines can be obtained from the Financial Intelligence Unit (FIU) at [police.govt.nz/advice/businesses-and-organisations/fiu/news-and-documents](https://police.govt.nz/advice/businesses-and-organisations/fiu/news-and-documents) ↗
- 23.27** Online contact with the FIU can be initiated via their contact form available at: [forms.police.govt.nz/forms/contact-us-financial-intelligence-unit-and-goaml/51](https://forms.police.govt.nz/forms/contact-us-financial-intelligence-unit-and-goaml/51) ↗
- 23.28** The Law Society advises practices to proactively register with the FIU in anticipation of possible suspicious transactions. This proactive approach is recommended due to the time-consuming process of becoming a registered reporting entity.

## 24. Valuable property

**24.1** A firm is required to keep records of any valuable property held in trust for a client, as mandated by Section 112(1). These records should be in a form that can be inspected and should:

- Include a description of the property received.
- Indicate the date when the property was received.
- If the property has been disposed of, provide details of the disposal, including the date and the recipient of the property, as specified in Sections 111 and 112 of the Act.

**24.2** For these requirements, valuable property includes items such as passports, sellable personal property like jewellery, share certificates managed by the firm, and anything of 'intrinsic' value, which could include sentimental items like family photos, or trophies.

### Example register of valuable property

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

Notes:

- This structure is applicable to both security documents and chattels.
- If a computer system incorporates a register for deeds, it typically fulfills the requirement.
- A substance-over-form approach is adopted, making a file note a potentially acceptable record.

## 25. Investments under s 322 of the Lawyers and Conveyancers Act 2006

- 25.1 The Lawyers' Fidelity Fund does not cover funds that a firm holds for investment purposes.
- 25.2 When a firm is instructed to invest funds as per section 322, it's mandated by RCCC 3.4(c) to notify the client in writing that the Lawyers' Fidelity Fund will not safeguard their money.
- 25.3 This disclosure is usually included in a firm's engagement documents, like client care disclosures.



## 26. Estates and trusts

- 26.1** It is essential to manage estate and trust funds in line with the specifications outlined in the will, administration letters, trust deed, and instructions from the trustees. All transactions, including investments, carried out by executors require collective consent from all necessary parties.
- 26.2** Given the relatively high number of complaints in this area of law, the following article may offer valuable guidance on minimising client dissatisfaction. [issuu.com/nzlawsociety/docs/lawtalk-905-web/38](https://issuu.com/nzlawsociety/docs/lawtalk-905-web/38) »
- 26.3** The Trusts Act 2019, which has been in effect since January 2021, codified common law principles and applies to estates.
- 26.4** Executors or trustees, and if applicable, the life tenant and residuary beneficiaries of an estate, must receive a statement detailing all trust funds managed for the estate or trust at least annually (Regulation 12(7)). Direct communication with beneficiaries is required when trustees mandate such interaction or when you, as a lawyer, act as the executor of the estate.
- 26.5** Residuary beneficiaries of estates should be promptly informed shortly after probate is granted, indicating their beneficiary status and providing an estimate of the expected timeframe before distribution can be finalised.
- All transactions within an estate or trust ledger must be authorised by all executors/trustees unanimously.
- 26.6** The Law Society recommends lawyers against drafting their own appointment as sole trustees. In situations where you act as the sole executor, consideration should be given to invoices being shared with residuary beneficiaries (Regulation 9). Beneficiary approval is not required for such fees however exercising such transparency often means complaints are less likely. If fees are deducted, the Inspectorate expects that invoices be provided to residuary beneficiaries before any deductions can be made.
- 26.7** Ledgers for estates and trusts should be set up in the name of the relevant estate or trust (e.g., 'Smith, John D Estate') rather than in the names of individual executors, trustees or beneficiaries.
- 26.8** Additionally, a detailed schedule of assets and liabilities should be created and sent to executors. This list should be updated regularly as additional assets are identified or disposed of.

## 27. Attorneys for sole practitioners

- 27.1 In accordance with Section 44 of the Act, sole practitioners must obtain a power of attorney.
- 27.2 Guidelines aimed at offering assistance to both donors and donees can be accessed on the Law Society website at:  
[lawsociety.org.nz/professional-practice/legal-practice/entering-sole-practice-as-a-barrister-and-solicitor](https://lawsociety.org.nz/professional-practice/legal-practice/entering-sole-practice-as-a-barrister-and-solicitor) <sup>28</sup>
- 27.3 Before proceeding, it's crucial to secure the approval of your chosen attorney and alternate and supply the Law Society with a copy of the Power of Attorney document.
- 27.4 For those practitioners accepting a Section 44 appointment, it's advisable to maintain at least yearly contact with the sole practitioner. This ensures the attorney stays acquainted with the firm, making it less burdensome if they need to take over the firm on short notice.
- 27.5 Sole practitioners are also encouraged to share their Inspectorate trust account review reports with their attorneys.
- 27.6 When a Section 44 power of attorney is exercised, the donee (i.e., the power of attorney) assumes the role of Trust Account Supervisor as per Regulation 16 and must be qualified as such.

## 28. Internal controls

- 28.1 Internal controls are a set of documented guidelines, procedures, and processes established within a law firm to ensure smooth and efficient operations. They assist in preventing and detecting errors, fraud and theft, ensure accuracy and completeness of accounting records, and compliance with the Act and Regulations. Documenting these controls provides a minimum standard for the firm and a measure to identify deviations.
- 28.2 Depending on the size of the law firm, various internal controls may be implemented, such as:
- **Separation of duties:** Different individuals should handle receipts, payments, and data entry. At a minimum, someone not involved in these tasks should complete bank reconciliations. Even if one person performs all duties, it's crucial to document procedures to prevent control lapses when the individual is on leave. It is also important annual leave is taken allowing someone else to conduct these tasks.
  - **Documented accounting processes:** This includes original documentation for data entry, daily procedures (promptness of data entry), and end-of-month procedures (including reconciliation supporting documentation).
  - **Documented file opening and closing procedures:** This includes when to provide client care information and how to obtain client bank account details. Closing procedures include preparing final invoices, statements, and payment of remaining trust funds.
  - **Documented payment procedures:** This includes the required supporting documentation and evidence of the payee's bank account number that needs to be seen by the authoriser. Payments should be authorised by two suitable individuals where possible.
  - **Documented file checklists**
  - **Form templates:** Examples include client informed consent, trust statements, settlement statements, and client invoicing.
  - **Documented processes for annual client statements:** This is applicable when ongoing balances exist within the trust account or IBD account.
  - **Documented file note procedures**
  - **A documented file review process**
  - **Scheduled meetings to discuss current matters**
- 28.3 It is important to periodically revisit these controls to ensure they remain relevant, fit for purpose, and address any emerging risks.

## 29. Computer system

### Security and access

- 29.1** It is common and anticipated for law firms to manage their trust account records digitally. In most applications, adequate security measures are necessary. It's advisable to seek guidance and adhere to proper safety measures when implementing any system that poses a significant risk to the firm due to data loss, hacking, or corruption.
- 29.2** The Government agency CERT has a range of excellent resources and guidance such as: [cert.govt.nz/individuals/guides/get-started-cyber-security](https://cert.govt.nz/individuals/guides/get-started-cyber-security) <sup>7</sup>
- 29.3** Many firms now utilise networked or cloud-based systems across their offices, providing broader access to various databases. In such cases, there should be initial access control via password at the network entry level. Each subsequently accessible software application should be evaluated for password entry control based on the risk associated with the data in that application.
- 29.4** Access to the trust account must be password-protected and should grant each individual who has access only the level of access necessary for their responsibilities. For instance, the trust accountant would have authority for all types of accounting entries, while other staff would only have access to the types of entries they are authorised to make; authors may be restricted to read-only access. Logins and passwords should not be shared.
- 29.5** Appropriate procedures must be followed regarding passwords, including:
- Passwords are known only to the respective users,
  - Passwords are changed regularly,
  - Passwords are not overly simplistic that they could be guessed by others,
  - Passwords of departing staff are deactivated.
- 29.6** Additionally, a timeout closure should be implemented to prevent unauthorised access to the system if staff leave their computer unattended.
- 29.7** Any form of remote access (e.g., from laptops or home offices) must be similarly controlled and secured against hackers.
- 29.8** Software suppliers support their customers through remote access, online helpdesks and knowledge bases, a telephone helpdesk, or by dispatching technicians to the site. In all cases, communications with the supplier should be authorised by the Trust Account Supervisor and recorded in a log. This log will provide a record of issues and service calls that may be useful in future disputes or enquiries.

## Controls on input

- 29.9** Work routines and procedures should be documented to guarantee that input is comprehensive, precise, and authorised. Here are some examples:
- Daily routines should be established, with clear allocation of responsibilities for different tasks.
  - If input batches are utilised, they should be verified and totalled prior to entry.
  - An input control record should be used to document what has been entered and to provide a running total that matches the computer's display.
  - Consideration should be given to staff training in input procedures, especially when there are changes in personnel.

## Controls on output

- 29.10** Most trust accounting systems generate a daily summary of transactions, or lists of receipts, payments, and journals. These reports should be scrutinised for any irregularities or unauthorised entries. This review can be done at the end of the month during the monthly reconciliation process. Attention should be paid to transaction reversals and correction entries.
- 29.11** Periodically, lists of aging balances should be shared with authors so they can review the balances they are responsible for and seek updated instructions if needed.

## System back-up and recovery

- 29.12** Back-up procedures should be thoroughly documented and regularly verified to ensure they are functioning. Back-up media should be stored offsite or in fireproof storage at regular intervals, depending on the volume of transactions (e.g., monthly for low volume, daily for high volume).
- 29.13** If the accounting system is based in the cloud, it's important to inquire about the location of the backup. Ideally, this would be in New Zealand and/or Australia. If not, the laws of the host country and any potential risks should be carefully considered.
- 29.14** Regular testing of restoration from back-up is recommended.
- 29.15** Provisions should be made for hardware facilities to be accessible in case your system is damaged, destroyed, or stolen in a burglary.
- 29.16** For manual systems, it is advisable to scan the records regularly (at least every 2 months) to safeguard against disasters like fire or flood.

## General

- 29.17** It is advisable to record the system and procedures for your firm in a manner that aids in orienting new staff to their roles and minimises disruption when an individual departs. Many software systems provide a basic procedures manual that can serve as a foundation for developing procedures specific to your firm.

## Selection and installation of new computer systems

- 29.18** Before implementing a system, it's important to conduct thorough research to determine which system best meets your practice's needs.
- 29.19** The Law Society has compiled a [Practice Briefing titled 'Choosing Trust Account and Practice Management Software'](#) <sup>7</sup>.
- 29.20** The practice briefing is designed to offer general guidance on matters that need to be considered.
- 29.21** The Inspectorate maintains a software contact schedule that includes commonly used trust accounting software packages. This schedule provides software names and contact details, allowing you to gather more information about their product's features and prices. Please note, the Law Society does not recommend nor endorse any software products. Firms must conduct their own due diligence.
- 29.22** When transitioning to a new system, several factors need to be considered:
- Deciding on the data to be converted, whether it's all data from the old system, or starting a new database while ensuring the old data is accessible if needed. If starting a new database, only data related to current matters would be converted.
  - If transitioning from a manual system, permanent information such as names, addresses, and account codes should be input before the planned conversion date, so that only the current balances need to be entered on the day.
  - Initial training will be guided by in-house software personnel. Afterward, features should be introduced gradually, for example, trust accounting functions one month, time and cost records the following month.
  - The time required to transition to a new system is often underestimated and can cause stress for staff.
  - It might be worth considering keeping the old system ready to be restarted for a period in case the new system is not fully successful.
- 29.23** Firms are reminded of their obligation to retain all trust account records for at least six years from the date of the last transaction.

## 30. Retention of trust account records

- 30.1** Regulation 11(5) stipulates that a practice must keep trust account records related to a client for at least six years following the recording of the last transaction. There are several other legal requirements to maintain trust account records for specific periods, such as obligations concerning income tax and GST. These guidelines do not attempt to list all such obligations.
- 30.2** It is advised that trust account records for Landonline conveyancing transactions be preserved for 10 years as required by reg 14 of the Land Transfer Regulations 2002.
- 30.3** In the event of the death or incapacity of a sole practitioner, their trust account records must be kept by the firm's successor or disposed of as per reg 11(5).
- 30.4** For detailed guidance on retention of records, refer to the Law Society website at: [Ownership-and-retention-of-records-opinion-Apr-2014.pdf](#) ↗

## 31. Closing or merging a firm

- 31.1 If a firm is closing or merging, please refer to the following practice briefing: [lawsociety.org.nz/professional-practice/practice-briefings/closing-down-or-selling-a-law-firm](https://lawsociety.org.nz/professional-practice/practice-briefings/closing-down-or-selling-a-law-firm) »
- 31.2 If there's a need to transfer any client balances, client approval must be obtained before making any transfers. The Inspectorate should also be informed and consulted. Regarding the closure of the trust account, the Inspectorate will typically conduct an 'exit' review and obtain several declarations, including the retention of trust account records.
- 31.3 The process around closing a firm often take longer than anticipated. We encourage early contact with the Inspectorate for support. Emails may be directed to [inspectorate@lawsociety.org.nz](mailto:inspectorate@lawsociety.org.nz).



## 32. Miscellaneous

### Daily and monthly routines

- 32.1** The Trust Account Administrator should consistently follow a daily routine of documenting all transactions. The Trust Account Supervisor has the duty to make sure this routine is not disrupted by other work-related demands. Similarly, the designated staff should promptly carry out the monthly tasks of balancing the trust ledger, reconciling the bank account, and scrutinising ledger accounts for discrepancies or peculiarities under appropriate oversight. The Trust Account Supervisor should conduct frequent meetings with the entire practice to discuss any trust account-related concerns.

### Client queries and complaints

- 32.2** The Trust Account Supervisor should investigate promptly any queries or complaints involving client money and be alert to any that may indicate a wider problem in the firm. Rule 3.8 of the RCCC requires all law firms to have appropriate procedures for handling client complaints promptly and fairly. In addition, the provisions of the RCCC on 'Client Service and Competence' (Chapter 3) and 'Fees' (Chapter 9) must be met.
- 32.3** The Law Society has prepared a practice briefing on running an effective internal complaints process: [lawsociety.org.nz/professional-practice/practice-briefings/running-an-effective-internal-complaints-process](https://lawsociety.org.nz/professional-practice/practice-briefings/running-an-effective-internal-complaints-process) »
- 32.4** It may be prudent to notify the firm's Professional Indemnity insurer (if there is one) immediately after a complaint has been made if there is a possibility of a claim being made against the firm. Early notification is recommended to ensure that cover is not jeopardised.

### Email Scams

- 32.5** The Law Society has information on its website describing common scams. These can be found at [lawsociety.org.nz/professional-practice/practice-briefings/email-scams-which-target-lawyers](https://lawsociety.org.nz/professional-practice/practice-briefings/email-scams-which-target-lawyers) »
- 32.6** Please advise the Inspectorate if your firm has been involved in a scam that impacts your trust account.
- 32.7** In addition, CERT NZ encourages anyone who experiences a cyber security threat – or even if they suspect they may have been exposed to one – to contact CERT NZ via [cert.govt.nz](https://cert.govt.nz) » any time or call 0800 CERT NZ, Monday to Friday, 7am – 7pm.
- 32.8** Where your firm is to make a payment to a third party (including another law firm) and has received electronic advice of the third party's bank account, it is recommended that the bank account details be verified eg by a phone call to the third party. As noted above even validated emails are considered inferior to evidence of payee account details received in person and in hard copy.

## Retiring or leaving staff

- 32.9** Ensure that there is a process in place for the smooth transition of ongoing tasks to another team member and that all inactive balances held for the author's clients are appropriately attended to.

## AML/CFT Compliance

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

- 32.11** The Law Society is not the regulator for AML/CFT compliance matters, however we note that AML/CFT requirements may be applicable so we have provided general guidance below. Please refer to the Department of Internal Affairs (DIA) or your AML/CFT Auditor for further information.

- 32.12** Lawyers who undertake specified activities ('captured activities') will need to ensure they have a programme in place to meet AML/CFT requirements.

- 32.13** Generally law firms need to:

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

## Department of Internal Affairs guide

- 32.14** The Department of Internal Affairs has produced a useful guide 'Guideline Lawyers and Conveyancers - Complying with the Anti-Money Laundering and Financing of Terrorism Act 2009': [dia.govt.nz/diawebsite.nsf/wpg\\_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines](https://dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Codes-of-Practice-and-Guidelines) <sup>7</sup>