



I assent.

[L.S.]

K. K. T. MARA
President

[21 October 1996]

AN ACT

TO MAKE PROVISION FOR THE PROPER CONDUCT AND AUDIT OF THE TRUST ACCOUNTS OF LEGAL PRACTITIONERS, AND RELATED PURPOSES

ENACTED by the Parliament of Fiji.

PART 1—PRELIMINARY

Short title and commencement

1.—(1) This Act may be cited as the Trust Accounts Act, 1996.

(2) This Act shall come into force on a date appointed by the Minister and published in the *Fiji Republic Gazette*.

Interpretation

2.—(1) In this Act—

“Attorney-General” means the Attorney-General for the Republic of Fiji;

“bank” means a bank authorised by law to carry on the business of commercial banking in Fiji;

“Court” means a Court of competent jurisdiction;

“financial period” means the period from the commencement of this Act and ending on 30 September in any year;

“Law Society” means the Fiji Law Society, a body established pursuant to the Legal Practitioners Act;

“legal practitioner” means a person admitted as a legal practitioner pursuant to the provisions of the Legal Practitioners Act;

“Minister” means Minister for Justice of the Republic of Fiji;

“moneys” includes any instrument for the payment of money which instrument may be paid into a bank;

“moneys received for or on behalf of any person” includes moneys held for or on behalf of any person whether or not originally received for or on that person’s behalf;

“person” includes a body corporate;

“quarter” means any three month period ending on March 31, June 30, September 30 or December 31 in any year;

“trust account” means a trust account established and kept under Section 5;

“trustee” means any legal practitioner engaged in the practice of his or her profession or the carrying on of his or her business, either solely on his or her own account or in partnership with any other person or persons and who, or the firm of which he or she is a partner, in the course of such practice or carrying on of business receives any money upon trust or upon terms requiring the legal practitioner to account to any person for that money, and includes any person deemed by regulation made under this Act to be a trustee;

“trust moneys” means moneys received for or on behalf of any other person by a trustee in the course of or in connection with the practice of the person’s profession or the carrying on of the person’s business. It does not mean instruments which are received by the trustee but payable to a person or persons other than the trustee, and not banked to an account with any bank which account is under the control of the trustee or any partner or partners of the trustee.

(2) Any person who receives trust moneys as a trustee but who ceases to be a trustee as defined above shall nevertheless continue to be a trustee for the purposes of this Act in respect of all such trust moneys received by that person.

PART 2—TRUST ACCOUNTS

Opening of Trust Accounts

3.—(1) Before establishing any trust account under this Act, a trustee shall notify both the Secretary of the Law Society and the Minister in writing of the trustee’s intention to do so (which notice shall specify the bank, the office or branch thereof at which the trustee intends to open the account, and the proposed name of the account) and shall, before establishing such account, satisfy the officer in charge of that office or branch of the bank that the trustee has complied with the requirements of this sub-section.

(2) The trustee of any trust account in existence at the date of commencement of this Act shall within 28 days after commencement notify in writing the Secretary of the Law Society and the Attorney-General of the bank and the office or branch thereof at which the account is kept, and the name of it.

(3) This Section shall not apply to trust accounts established pursuant to Section 4(5).

(4) Where the trustee is a firm change in the composition of the firm shall not, unless a new trust account is opened, be a circumstance which requires notification pursuant to this Section.

Accounts and other records to be kept by Trustees

4.—(1) A trustee shall keep or cause to be kept displayed in the English language such accounting and other records of all trusts moneys as—

- (a) sufficiently explain the transaction recorded therein;
- (b) disclose at all times the true position regarding all trust moneys held and the application of trust moneys received;
- (c) are prescribed; and
- (d) enable the accounting records to be conveniently and properly audited.

(2) A trustee shall keep all accounting and other records relating to trust moneys at the trustee's sole or principal place of business or at such other places as may be approved in writing by the Secretary of the Law Society except where for the purpose of audit under this Act the accounting and other records are in the possession of an auditor for such time as may be reasonably necessary for that purpose. Copies of such accounting and other records may be kept elsewhere. Paid cheques may be left with the bank that has obtained possession of them.

(3) The accounting and other records referred to in this Section shall be retained for a period of not less than 6 years by the trustee and such longer period as the Minister or Secretary of the Law Society may require of a particular trustee. Where these records include documents which are the property of another person, the trustee's obligation to retain those documents ceases when those documents are removed from the trustee's possession at that person's direction.

(4) Every entry in the accounting and other records referred to in this Section shall be deemed, unless the contrary is shown, to have been made by or at the direction of the trustee.

(5) Where trust moneys are disbursed by a trustee by way of investment in the name of the trustee or under the trustee's control or which the trustee has authority to dispose

of, the duty of the trustee under this Act with respect to the keeping of account and other records of trust moneys, and accounting for these, extends at all times in relation to such investments in all respects as if the investments were trust moneys within the meaning of this Act.

(6) A false name shall not be recorded in any trust accounting record unless all other names by which the person is known are also recorded.

Moneys received by Trustees

5.—(1) A trustee shall establish and keep in a bank or banks in Fiji one or more trust accounts designated or evidenced as such into which the trustee shall pay all trust moneys received by that trustee.

(2) A trustee shall not pay to the trustee's trust account any moneys other than trust moneys received by the trustee. A trustee shall not be prohibited from paying into the trustee's trust account moneys received by the trustee part of which is attributable to trust moneys and the remaining part attributable to professional costs, statutory duties or charges or other proper outlays already incurred or disbursed.

(3) Moneys required to be paid into a trust account shall be paid on the day of receipt, save where it is not reasonably practicable to do so, in which case they shall be paid as soon as reasonably practicable.

(4) When moneys are received by a trustee (other than in cash) but payable to a person or persons other than the trustee or any partner or partners of the trustee, and not banked to an account with any bank which account is under the control of the trustee or any partner or partners of the trustee, a record shall be kept by the trustee, as part of the relevant transaction file or otherwise, of the amount of such moneys, and the circumstances of its receipt and payment by the trustee.

Withdrawals of moneys from Trust Account

6.—(1) A trustee shall not withdraw moneys from a trust account except for the following purposes:—

- (a) payment to the person on whose behalf the moneys are held or in accordance with that person's directions;
- (b) payment to the trustee of disbursements properly paid by the trustee on behalf of the client in question. Disbursements shall be deemed to have been paid on the day the cheque in payment of the disbursement has left the possession and control of the trustee, and the trustee has no reason to believe that the cheque will not be paid on presentation;
- (c) payment to the trustee for professional costs in the following circumstances:—

- (i) where the payment is supported by authorisation in writing by the person on whose behalf the moneys are held. Where the authorisation is not specific as to the amount to be paid, the trustee shall forward an account to the client in question prior to making such payment;
 - (ii) in payment of an account which has been delivered to the client and at the expiration of 30 days after delivery no evidence exists of any objection by the client to the quantum thereof;
 - (iii) where the moneys in the trust account were received by the trustee in payment or part payment of an account previously rendered to the client in question;
- (d) payment that is otherwise authorised by statute or made pursuant to an order of the Court.

(2) A trustee shall not withdraw any moneys from a trust account for the purpose of making an investment of such moneys (including, without limiting the generality hereof, a deposit with a financial institution, a loan, or government securities) save in accordance with the written authority of the person entitled to such moneys. The word "investment" in this sub-section shall include the payment for any land, chattels or livestock in the name of the person for whom or on whose behalf the moneys were paid into the trust account.

Method of payment from Trust Account

7.—(1) A trustee shall not cause any payment to be made from a trust account unless the payment is made by the trustee's cheque or by a cheque drawn by a bank, crossed and marked on its face "not negotiable" and payable to order.

(2) Cheques drawn on a trustee's trust account shall be drawn on cheque forms having on the face thereof a direction to pay to order, a crossing "not negotiable" and the words "Trust Account".

(3) Where a trustee purchases a cheque drawn by a bank, and make payment for that cheque by the trustee's cheque, the trustee's cheque shall have endorsed on the back thereof the intended payee of the bank's cheque, and such endorsement shall be signed by an authorised signatory of the trust account.

(4) No person shall be a signatory to a trust account unless that person is a legal practitioner entitled to practice on his or her own account, or approved by the Law Society on such conditions, if any, as it may decide.

Other Trust Accounts

8. Where a legal practitioner has authority to draw moneys from an account held with a bank or other financial institution without the signature of any other person (other than a partner of that legal practitioner), and the moneys in such account are properly of a client or clients of that legal practitioner:—

- (a) the moneys for the time being in such account shall be deemed to be moneys received for or on behalf of the client of a legal practitioner; and
- (b) the account save for the purposes of Section 18 shall be deemed to be an account established and kept under Section 5; and
- (c) the legal practitioner shall be deemed to be a trustee of such moneys within the meaning of this Act.

Accounting to persons entitled

9.—(1) Within 7 days of demand in writing by the person for whom trust moneys are held by a trustee and to which that person is then entitled, the trustee shall pay to the person entitled thereto the moneys to which that person is entitled or as that person may direct in writing, unless the trustee has already lawfully disposed of the moneys.

(2) Within 7 days of demand in writing made by a person for whom or on whose behalf trust moneys have been received, the trustee shall render to that person a correct and detailed account in writing of all such moneys and of the application thereof.

(3) Nothing in this Section shall deprive a trustee of any recourse or right, whether by lien or otherwise, against trust moneys held by that trustee.

Dispute as to ownership

10. Where before the making of a payment from a trust account a trustee has received notice in writing from any person who was a party to the business proceeding or transaction in respect of which the moneys were received that the entitlement of any person to those moneys is in dispute, the trustee shall not, save pursuant to the written consent of the parties, make payment of any such moneys until:—

- (a) the trustee is advised that legal proceedings have been commenced to determine the entitlement of any persons to the moneys whereupon the trustee shall forthwith pay the moneys into the Court in which the proceedings have been taken to abide the decision of the Court; or
- (b) when no advice is received by the trustee pursuant to paragraph (a) within a period of 60 days after the receipt of the notice first mentioned in this Section, the said period expires.

PART 3—AUDIT OF TRUST ACCOUNTS

Auditor—appointment, qualifications, and cessation of appointment

11.—(1) A trustee shall appoint a person or firm as auditor to audit the trust accounts, accounting and other records required to be kept by the trustee pursuant to this Act.

(2) A trustee shall notify the Secretary of the Law Society of the full name and business address of the auditor so appointed within one month after the later of the date

of commencement of this Act, and the date upon which the trustee becomes a trustee. Notification of appointment shall be accompanied by written evidence of the auditor's acceptance of the appointment.

(3) A person shall not accept appointment as nor act as auditor under this Act unless that person—

- (a) is the current holder of a Certificate of Public Practice issued by the Fiji Institute of Accountants (this provision shall not apply to a person or class of persons approved by the Minister); and
- (b) is not indebted in an amount exceeding one thousand dollars to the trustee or firm of which the trustee is a partner except for fees and expenses for professional service rendered by the trustee or such firm; and
- (c) is not a partner or employee of the trustee or any employee of the trustee.

(4) Where a firm is appointed or intended to be appointed as auditor, that firm shall not accept appointment or so act unless every member of that firm satisfies the qualifications in the preceding subsection.

(5) The appointment of a firm as auditor by a trustee shall be deemed to be an appointment of all persons who are members of that firm at the date of appointment.

(6) Where a firm has been appointed as auditor by a trustee and the membership of the firm changes, the firm as newly constituted shall, provided it is not disqualified from acting as auditor, be deemed to be appointed as auditor by the trustee and that appointment shall be taken to be an appointment of all persons who are members of the firm, and no fresh notice of appointment shall be required.

(7) A report or notice that purports to be made or given by an auditor appointed by a trustee shall not be duly made or given unless signed by the auditor, and in the event that the auditor is a firm, is signed by a member of the firm in the firm name and in his or her own name.

(8) Whenever an auditor appointed by a trustee ceases to act as such for any reason, the auditor and the trustee shall forthwith give notice to the Minister and the Law Society. The auditor may provide to the Minister or the Law Society a report setting out the circumstances of that cessation.

Audit of Trust Accounts and accounting and other records

12.—(1) A trustee shall in respect of each financial period cause the trust accounts, accounting and other records required to be kept by the trustee pursuant to this Act to be audited by the trustee's auditor in respect of the whole of the financial period in question.

The auditor shall within 2 months after the end of that financial period lodge with the Law Society and the Minister a report by the auditor containing the information prescribed.

(2) The Minister shall have the right on application by the auditor or the trustee to extend the time within which the auditor's report must be lodged, and such approval may be given subject to conditions.

(3) The trustee shall lodge or cause to be lodged (within the time limited for lodging of the auditor's report) with the Law Society and the Minister a statement signed by the trustee (and where the trustee carries on practice or business in partnership, at least 2 members of the firm) stating:

- (a) whether all trust moneys received by the trustee or the firm as the case may be during the financial period in question have been lodged to the credit of a trust account kept under this Act (designating the bank and the office or branch thereof);
- (b) whether the moneys referred to in paragraph (a) have been applied for the purposes for which they were so received and in accordance with the Act or are still retained in a trust account referred to in that paragraph;
- (c) all trust ledger account balances that have remained static during the financial period in question, and the reasons why those balances have remained static.

(4) An auditor appointed under this Act shall have a right of access at all times to the accounting and other records of the trustee required to be kept by the trustee pursuant to this Act including all files containing information supporting or relevant to entries in the accounts the subject of the audit and to any books, accounts, cheques or other records (including any business or private bank account) relating to an account designated or evidenced as a trust account of the trustee and may require from the trustee and any partners servants or agents of the trustee such explanation and information as the auditor desires for the performance of the auditor's functions under this Act. "Agents" used in this subsection shall include the manager and accountant of the branch of the bank at which any account of the trustee, whether or not designated as a trust account, is kept.

(5) No person shall fail to promptly provide such explanation and information when required by the auditor.

(6) For the proper performance of the auditor's functions under this Act, the auditor may require the trustee, and any partners or employees of the trustee, to produce for the auditor's examination such books, accounts or records as the auditor may request. No person shall fail to comply promptly with such request by the auditor.

Unannounced examination

13.—(1) An auditor appointed by a trustee under this Act shall at least once during every financial period make an unannounced examination of the trust accounts and the accounting and other records required to be kept by the trustee pursuant to this Act.

(2) An auditor or trustee may apply to the Minister for exemption from the operation of this Section on the basis that it is impractical or unduly onerous to make an unannounced examination in any financial period, and the Minister may grant exemption subject to such conditions as the Minister may think fit.

Duty of auditor

14. An auditor shall as soon as reasonably practicable report to the Minister and to the Secretary of the Law Society when in the performance of the auditor's duties, the auditor becomes aware:—

- (a) of any matter which may adversely affect the financial position of the trustee to a material extent; or
- (b) of any matter which in the auditor's opinion may constitute fraudulent conversion of any trust moneys, failure to pay trust moneys into a trust account, or unauthorised withdrawal of moneys from a trust account; or
- (c) of failure to reconcile trust records on a monthly basis.

Audit of accounts on ceasing to be trustee

15.—(1) Where a person ceases to be a trustee, such person (or in the case of death, his or her personal representative) shall within two (2) months of such cessation cause the trust accounts, accounting and other records kept by that person up to the time of cessation to be audited from the time such person became a trustee or the date up to which those accounts were last audited pursuant to Section 12 (whichever is the later) to the date of cessation, by the auditor appointed by that person pursuant to Section 11.

(2) The provisions of Section 12 shall apply as if the audit and the person referred to in sub-section (1) were an audit undertaken pursuant to Section 12(1), and the person (or if dead, his or her personal representative) were a trustee.

(3) This Section shall not apply where the person carried on practice or business in partnership with one or more persons, and those others continue to be trustee of the trust accounts.

Appointment of trust account inspector by Law Society or Minister

16.—(1) The Minister or the Law Society may at any time appoint an inspector to examine the accounts and records of any trustee.

(2) The appointor shall not be required to give any reason for the appointment, and the inspector appointed shall have such qualifications as the appointor considers adequate.

(3) The inspector shall furnish a report to the appointor of the examination.

(4) The trustee, his or her partners, employees and agents and any other persons who may have documents or information relevant to the accounts or records shall upon demand by the inspector:—

- (a) produce to the inspector all books and records relating to the business or practice carried on by the trustee, any trust moneys received or held by the trustee, or the conduct of the practice or business;
- (b) answer truthfully to the inspector all questions by him or her relating to the books records and conduct of such practice or business; and
- (c) give to the inspector copies of all documents and records that he or she may reasonably require.

(5) Every officer of any bank or financial institution which a trustee has deposited any moneys with, or withdrawn any moneys from, or conducts an account with, shall on demand by the inspector:—

- (a) disclose to the inspector the names of the persons who conduct the account and are authorised to operate on the account;
- (b) disclose to the inspector all information in the knowledge of or available to the officer relating to such deposits, withdrawals or otherwise in relation to such account or accounts;
- (c) permit the inspector to make a copy of any document or record relating to such matters.

For the purposes of this sub-section, a person alleged by the inspector to be a trustee shall be deemed to be a trustee unless the contrary is proven.

(6) A person cannot refuse to answer a question or supply information or produce any document on the ground that to do so may incriminate him or her, but any answer given cannot be used in any criminal prosecution against that person, save in a prosecution for making a false statement.

(7) The inspector shall if requested by any person produce a letter or document (or a copy of such letter or document) confirming his or her appointment in relation to the relevant trustee signed by the Minister or the Minister's delegate or in the case of the Law Society by the President thereof or two members of its Council. No person shall be required

to comply with any demand or requirement of an inspector pursuant to this Section if they have requested the inspector to produce a letter or document of appointment, until such letter or document (or copy thereof) is produced to them.

(8) If the inspector's report of such examination to the appointor states that there is evidence that a breach of this Act has been committed by the trustee and the appointor is of the opinion that the breach was wilful or of a substantial nature, then the costs of the inspection shall be payable by the trustee and may be recoverable by the appointor from the trustee in a Court. No proceedings for recovery by the appointor shall be commenced until a copy of the inspectors report has been delivered to the trustee, and the trustee has been afforded a reasonable opportunity to the appointor in relation to the matter set out in the report.

Obstruction

17. No person shall:—

- (a) obstruct, threaten or intimidate or attempt to intimidate an auditor or inspector in the exercise of any powers or functions under this Act by the auditor or inspector; or
- (b) fail to comply as soon as reasonably practical with any requirement or request for information which an auditor or inspector is empowered to make of that person by the provisions of this Act.

Duties of banks

18.—(1) The manager or other principal officer of the office or branch of a bank at which a trust account is kept shall promptly notify the Minister and the Law Society whenever the trust account is overdrawn or whenever a cheque drawn on the trust account is dishonoured by reason of insufficiency of funds in the trust account to meet the cheque.

- (2) (a) Each bank at which one or more trust accounts are kept shall within 7 days after the end of each calendar month pay to the Funds Trustee appointed under this Act an amount of money calculated in accordance with this sub-section.
- (b) This amount shall be calculated by applying to the daily balances maintained in such trust accounts during each month the rate specified in the following sub-paragraph in the same manner as if such trust accounts bore interest calculated on daily balances at that rate.
- (c) The rate shall be 2% less than the weighted time deposit rate as calculated by the Reserve Bank of Fiji for the month immediately preceding that month in respect of which payment pursuant to this sub-section is to be made.

- (d) Should the weighted time deposit rate not be calculated by the Reserve Bank of Fiji for the month immediately preceding that in respect of which payment is to be made (or if calculated, the Funds Trustee appointed pursuant to Section 21 is not advised of that rate) within sufficient time to allow calculations to be made as required by this Section within the time limited then the weighted time deposit rate last calculated by the Reserve Bank of Fiji and advised to the funds Trustee shall be applied in making the calculations required by this Section.
- (e) Should the Reserve Bank of Fiji cease to calculate the weighted time deposit rate, then the rate which the Minister advises the Funds Trustee approximates, in the Ministers opinion, most closely the basis and method of calculation of the weighted time deposit rate, shall replace, for the purposes of making the calculations required by this Section, the weighted time deposit rate.
- (f) If there is at any time no Funds Trustee appointed pursuant to this Act then moneys which would otherwise be payable by a bank in accordance with this subsection shall be accumulated by such bank and paid to the Funds Trustee within seven days of such person's appointment.

PART 4—CONTRIBUTION FUND AND FIDELITY FUND

Contribution Fund

19.—(1) There will be established a Fund which shall be known as the Contribution Fund.

(2) This fund shall be applied for the purposes set out in this Act.

Moneys payable to the Contribution Fund

20. The Contribution Fund shall consist of

- (a) all moneys paid or payable to the Funds Trustee pursuant to Section 18;
- (b) interest which may from time to time accrue on moneys held in or forming part of the Contribution Fund; and
- (c) all other moneys which may lawfully be paid to the Contribution Fund.

Management of Contribution Fund

21.—(1) The Attorney-General shall appoint a Funds Trustee to manage the Contribution Fund and the other Funds established by this and the following Section on such terms and conditions as may be prescribed by regulations.

(2) The Funds Trustee shall be 3 persons, or a corporation or body including natural persons who shall have such qualifications and experience as the Attorney-General considers appropriate for the management and distribution of such Funds.

(3) The Funds Trustee may give effective receipts for all moneys received into the Contribution Fund.

(4) The Funds Trustee may invest moneys in the Contribution Fund that are not immediately required for the purposes thereof—

- (a) in securities of or guaranteed by the Government of the Republic of Fiji;
- (b) with or on deposit with a bank or in securities of, guaranteed or accepted by a bank lawfully carrying on business in Fiji;
- (c) in such other manner which the Attorney-General may approve from time to time.

(5) The Funds Trustee shall in respect of each financial period cause a statement to be prepared of the income and expenditure during that period of the Funds referred to in this Section, and a statement of the assets of those Funds at the end of the financial period. The Funds Trustee shall cause these funds to be audited by an auditor being the current holder of a Certificate of Public Practice issued by the Fiji Institute of Accountants, and a copy of the statements and the auditors report shall be delivered by the Funds Trustee to the Attorney-General within 14 days of receipt by the Funds Trustee of the Auditors report.

Distributions from Contribution Fund

22.—(1) The Funds Trustee may periodically but shall no later than 21 days after the last day of each quarter distribute from the Contribution Fund the available moneys in respect of that quarter in the manner following—

- (a) 10% to be distributed to clients;
- (b) 10% to the Funds Trustee to meet the costs, fees and expenses of the Funds Trustee in the administration of the Contribution Fund and the other funds referred to in this Section;
- (c) 48% to a Fund to be known as the Legal Aid Fund to meet the costs and expenses of a Legal Aid Commission established or to be established by statute. Of this amount, at least three-quarters thereof must be applied to the costs payable by such Commission to legal practitioners in private practice;
- (d) 12% to a Fund to be known as the Law Society Fund to be applied firstly to meet the reasonable expenses of the Law Society in employing an Executive Officer and Secretary, the provision of office accommodation and facilities reasonably required by these persons. If the amount in this Fund at any time is insufficient for these purposes, then the shortfall shall be paid from the moneys available for distribution before any payment is made to any of the other funds constituted by this sub-paragraph. The

balance of these moneys shall be applied to meet the reasonable travel expenses of such persons, the reasonable meeting expenses of the Council of the Law Society, the reasonable travel costs of the members of such Council, costs of continuing legal education, inspection of trustees' trusts accounts, and such other purposes as may be approved from time to time by the Attorney-General;

- (e) 4% to a fund to be known as the Fidelity Fund to make the payments from such fund which may be lawfully required by the Law Society to be paid. Where the amount of the Fidelity Fund, including any interest earned by the Fidelity Fund, exceeds one million dollars at the end of any quarter, such excess shall be applied proportionally between the other funds established by this sub-section.
- (f) 16% to a fund to be known as the Stabilisation Fund. After the Stabilisation Fund has been established for one year no contribution shall be made to this fund in any quarter when the amount of such fund, including any interest earned thereon, at the beginning of that quarter exceeds twice the total amount available for distribution pursuant to this sub-section in the previous twelve months. The moneys which would otherwise have been payable to this fund shall thereupon be distributed proportionally to the other funds constituted by this sub-section. When in any quarter the amount available for distribution pursuant to this sub-section is less than the amount available for distribution in the corresponding quarter of the previous year, then the stabilisation fund shall be applied proportionally in payment to the other funds established by this sub-section to the extent that the amount available to such funds in such quarter is less than the amount available to those funds in the corresponding quarter of the previous year.

(2) The powers of the Funds Trustee in relation to the investment of the Contribution Fund shall likewise apply to the funds constituted by the preceding sub-Section.

(3) The Funds Trustee may at its discretion apply from the Legal Aid Fund and the Law Society Fund moneys to the Legal Aid Commission or the Law Society respectively on receipt of such assurances as it might think fit that those moneys will be applied for the purposes designated for those funds in sub-section 1(b) of this Section.

(4) Nothing in this Act shall prevent the Funds Trustee from receiving and paying into any one or more of the funds referred to in subsection 1(b) of this Section moneys paid to the Fund Trustee for the purposes of such fund or funds.

Fidelity Fund

23.—(1) The Fidelity Fund constituted by Section 22 shall be applied at the direction of the Law Society for the purpose of reimbursing persons who suffer loss after the commencement of this Act through the stealing or fraudulent misappropriation by a legal practitioner in private practice on his or her own account or in partnership with others, or by any clerk or servant of such legal practitioner, of any money or other property

entrusted to such legal practitioner, clerk or servant in the course of such practice. No reimbursement shall be made under this Section however in respect of the loss of any money or other property entrusted to a legal practitioner, clerk or servant for the sole purpose of investment. The word "investment" in this sub-section shall have the same meaning as it has in Section 6(2).

(2) Any claim for reimbursement shall be made to the Law Society.

(3) No claim shall be made to the Law Society unless notice in writing of such claim has been given to the Law Society within 12 months after the claimant has become aware of the stealing or fraudulent misappropriation.

(4) The total amount which may be applied from the Fidelity Fund in reimbursement of all persons who suffer loss through stealing or fraudulent misappropriation by the same legal practitioner or servant or clerk of such practitioner shall not exceed the sum of \$50,000-00 in any 12 month period.

(5) The Law Society may direct, notwithstanding the preceding sub-section, after taking into account all liabilities of the fund whether ascertained or contingent, that such amount in excess of the total amount limited by the previous sub-section be paid as it thinks fit towards reimbursement of such persons.

(6) In considering any claim pursuant to this Section, the Law Society may in its absolute discretion direct that there be paid to the claimant out of the Fidelity Fund in addition to the amount to which the claimant would otherwise be entitled pursuant to this Section, interest on such part of the claim for such period and at such rate as the Law Society may determine, and such costs and expenses as the Law Society may consider have been reasonably incurred by the claimant in making and proving the claimant's claim pursuant to this Section.

(7) Any person who has made a claim under this Section and who is dissatisfied with the decision of the Law Society in respect of the claim may apply to the High Court or a Judge thereof for a declaration for the rights of the claimant.

(8) The Law Society may receive and settle any claim made pursuant to this Section at any time after such stealing or fraudulent misappropriation. However no person shall be entitled without leave of the Law Society or a Judge of the High Court, to commence any action or other proceeding against the Law Society in relation to the fund unless the claimant has exhausted all rights of action and other legal remedies reasonably open to it against any persons liable in respect of the loss suffered by the claimant.

(9) The Funds Trustee shall pay from the Fidelity Fund such amount and to such person as the Law Society may direct in accordance with its obligations under this Section.

(10) The Law Society shall be entitled to be reimbursed from the Fidelity Fund all its costs and expenses in considering, investigating or defending any claims brought against it pursuant to this Section, whether successful or not.

Defences to claims against Fidelity Fund

24.—(1) In any action or other proceeding brought against the Law Society in relation to the Fidelity Fund, all defences which would have been available to the legal practitioner or other person shall be available to the Law Society.

(2) Upon payment out of the Fidelity Fund in payment of a claim or part thereof, the Law Society shall be subrogated to the extent of that payment to all rights and remedies of the claimant against any person in respect of such stealing or fraudulent misappropriation.

(3) The Law Society may exercise the rights and remedies referred to in the preceding sub-section in its own name or in the name of the claimant, and the claimant shall provide all necessary assistance to enable the Law Society to exercise those rights and remedies.

(4) All moneys recovered by the Society in the exercise of these rights and remedies shall be paid into the Fidelity Fund, and the Law Society shall indemnify a claimant against any costs awarded against a claimant in any proceedings brought by the Law Society in the name of the claimant pursuant to this Section.

Insufficiency of Fidelity Fund

25.—(1) No money or other property of the Law Society shall be available for the satisfaction of any judgment or order obtained against the Law Society, or for the payment of any claim allowed by the Law Society, pursuant to Section 23. If at any time the Fidelity Fund is insufficient to provide for the satisfaction of such judgments, orders and claims, they shall to the extent they are not so satisfied, be charged against future accumulations of the Fund.

(2) In the event of such insufficiency, the Law Society may at its absolute discretion determine the order in which judgments and claims shall be satisfied, but shall take into account the following:—

- (a) the relative degrees of hardship suffered or likely to be suffered by the individual claimants;
- (b) claims not exceeding \$1,000 may be satisfied in full before claims for greater amounts are satisfied to a greater extent than \$1,000;
- (c) where all other considerations are equal, claimants should have priority among themselves according to the dates of judgments or orders or when the claims were admitted by the Law Society as the case may be.

Unclaimed moneys

26.—(1) Any trustees who has at the end of a financial period under the trustee's possession or control any property to which a person has been for the previous year absolutely entitled, and the whereabouts or identity of such person (or, if dead, that person's personal representatives) are unknown, shall lodge with the Funds Trustee a return in writing signed by the trustee setting out particulars of that property and that person, together with a statement of all costs charges and expenses claimed by the trustee

in relation to such person or property and any claim or lien over the property. The return shall include an explanation of how the property came to be in the trustee's possession or control and the reasons why it has not been delivered to the beneficiary.

(2) On receipt of such return, the Funds Trustee may direct the trustee to deliver or pay to the Contribution Fund the property referred to in the return within 14 days of such notice or such extended time as the Funds Trustee may allow, and any lien claimed against such property shall have no effect. The trustee shall comply with such direction.

(3) Where costs charges or expenses are claimed by the trustee to be payable to the trustee out of the property in question or by the person entitled thereto, the Funds Trustee if satisfied that these are proper, shall pay the same to an amount not exceeding the amount of the property in question.

(4) If a trustee fails to comply with a requirement by the Funds Trustee pursuant to this Section, the Funds Trustee may apply to a Court for an order that the trustee deliver or pay over the property in question.

(5) Interest earned on such property (but not the property itself) shall be available for distribution in accordance with Section 22.

(6) If any claim is made to the Funds Trustee by the person properly entitled to such property, then the Funds Trustee shall, if satisfied of the validity of such claim, pay the property in question less any amount properly paid to the trustee from such property, to the claimant.

PART 5—REGULATORY

Confidentiality

27. Any information, reports or records received by:—

- (a) the Attorney-General;
- (b) the Minister;
- (c) the Law Society;
- (d) the Funds Trustee or
- (e) the Director of Public Prosecutions,

pursuant to this Act shall not be a matter of public record nor made available to members of the public. Any person or body named in this Section shall be entitled to provide any such information, reports, records or copies thereof to any other persons or bodies named in this Section, and such information, records or documents may be used in any investigation, prosecution, disciplinary proceeding, or otherwise for the purposes pursuant to the functions and duties of such person or body.

Offences and penalties

28.—(1) A person who—

- (a) contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act and is liable on conviction to a penalty of \$3,000; or

- (b) with intent to defraud contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act and is liable on conviction to a penalty of \$10,000 or to imprisonment for 3 years.

(2) Any person who is convicted of an offence against this Act shall be guilty of a further offence against this Act if the offence continues after the person is convicted and liable to an additional penalty of \$500.00 for each day during which the offence so continues.

Regulations

29.—(1) The Minister may make regulations not inconsistent with this Act for or with respect to —

- (a) prescribing the persons to whom the reports of auditors and inspectors shall be sent for inspection, information, record or use;
- (b) trustees' books, accounts and records, their form and manner of keeping, and accountancy procedures to be following in relation to these;
- (c) the nature and scope of, and procedures and standards to be followed or given due regard to in audits inspections and unannounced examinations for the purpose of this Act and the form and content of reports in relation to such audits examinations and inspections;
- (d) returns and statements to be furnished by trustees and the persons to whom such returns and statements shall be sent or made available;
- (e) forms and the purposes for which forms are to be used;
- (f) the preparation by trustees of accounts and financial statements and the form and content of these;
- (g) cheques and receipts of trustees relating to trust moneys;
- (h) requiring persons appointed as auditors under this Act to have professional indemnity insurance in an amount prescribed indemnifying those persons in respect of claims made against them in relation to their functions and duties under this Act;
- (i) all matters and things which are necessary or expedient to be prescribed to give effect to this Act.

(2) The regulations may be of general or limited application; and may impose a penalty of not more than \$3,000 for any breach thereof, and in the case of a continuing breach, an additional penalty not exceeding \$500.00 per day for so long as the breach continues.

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Passed by the House of Representatives this Eighteenth day of July, in the year of our Lord One Thousand, Nine Hundred and Ninety-Six.

Passed by the Senate this First day of October, in the year of our Lord One Thousand, Nine Hundred and Ninety-Six.