

## **Unvalidated References:**

*Trust Accounts Act 1961*

*Accountants Act 1996*

*Trust Accounts (Lawyers) Regulation*

This reprint of this Statutory Instrument incorporates all amendments, if any, made before 25 November 2006 and in force at 1 July 2001.

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Legislative Counsel  
Dated 25 November 2006

## **INDEPENDENT STATE OF PAPUA NEW GUINEA.**

### Chapter 287.

#### ***Trust Accounts (Lawyers) Regulation 1969***



## ARRANGEMENT OF SECTIONS.

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### **SCHEDULE 1 – Statutory declaration.**

#### ***Trust Accounts (Lawyers) Regulation 1969***

MADE under the *Trust Accounts Act 1961*.

Dated                    200 .

### **1. INTERPRETATION.**

<sup>1</sup>(1) In this Regulation, unless the contrary intention appears—

“**auditor**” means a person authorized under this Regulation to audit trust accounts;

“**trust accounts**” means accounts relating to moneys received or held by a lawyer for or on behalf of another person;

“**year**” means a period of 12 months ending on 28 February.

(2) Until the commencement of Part II. of the *Lawyers’ Admission Act*, a reference in this Regulation to the Council of Legal Education shall be read and construed as a reference to the Attorney-General.

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<sup>1</sup> Section 1 amended by No. 47 of 1977, Schedule 2.

**2. EXCEPTION OF CERTAIN LAWYERS.**

<sup>2</sup>A lawyer who, in the course of his practice, does not receive or hold moneys for or on behalf of another person shall be deemed to have complied with this Regulation if within the period of four months specified in Section 4 he makes a statutory declaration to that effect and delivers it to the Attorney-General.

**3. QUALIFICATIONS OF AUDITORS.**

A person registered as a Registered Public Accountant under the *Accountants Act 1996* is authorized to audit trust accounts under this Regulation.

**4. AUDIT OF LAWYERS' TRUST ACCOUNTS.**

(1) Within four months after the end of each year a lawyer who was in practice in the country during the whole or a part of the year must cause his trust accounts for the year to be audited by an auditor.

(2) The auditor must, without delay, after the completion of the audit, send to the Attorney-General a report of the result of the audit, verified by the statutory declaration of the auditor in the form in the Schedule, and send to the lawyer a signed copy of the report.

Penalty: A fine not exceeding K200.00.

**5. BUSINESS CARRIED ON AT MORE THAN ONE PLACE.**

If a lawyer carries on business at more than one place, the Attorney-General may give such written directions as he thinks proper for—

- (a) the separate audits of the trust accounts of the business carried on at each place; or
- (b) the acceptance by the auditor of the report of some person approved by the Attorney-General with respect to the examination of the trust accounts kept at a branch of the business.

**6. IMMEDIATE AUDIT IN CERTAIN CASES.**

(1) If it appears to a Judge that—

- (a) there is reason to suspect that a lawyer has been guilty of unprofessional conduct with respect to—
  - (i) moneys received or held by him for or on behalf of any person; or
  - (ii) failure to account for such moneys; or
- (b) a lawyer has committed a breach of the Act or this Regulation,

the Judge may direct an auditor to audit the trust accounts of the lawyer without delay and to report to him within such time as he directs.

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<sup>2</sup> Section 2 replaced by No. 14 of 1984.

(2) The Council of Legal Education or the person for whom or on whose behalf moneys were received or are held by the lawyer may apply to a Judge to direct an audit under this section.

(3) Where an application is made to a Judge to direct an audit under this section, the direction may be given subject to such terms or conditions as the Judge thinks proper.

(4) Unless otherwise directed by the Judge on receipt of the report, the expenses of an audit under this section shall be paid by the applicant.

(5) On receipt of the report, the Judge may direct that the expenses of the audit be paid by the lawyer whose trust accounts have been directed to be audited.

(6) If it appears to the Judge that the report discloses any irregularity, he shall direct that a copy be forwarded immediately to the Council of Legal Education.

## **7. DUTIES OF LAWYERS WITH RESPECT TO AUDIT.**

(1) For the purpose of an audit under this Regulation, a lawyer must, as and when the auditor requires—

- (a) produce to the auditor all books, papers, accounts, documents and securities in any way relating to moneys received by the lawyer for or on behalf of any person; and
- (b) furnish the auditor with all the information that he reasonably requires.

(2) A lawyer must keep his trust accounts in such a manner as to disclose to the auditor the true position of the moneys to which they relate and to enable the accounts to be conveniently and properly audited.

Penalty: A fine not exceeding K200.00.

## **8. DUTIES OF BANKERS WITH RESPECT TO AUDIT.**

On the request of an auditor engaged in the audit of a lawyer's trust account under this Regulation, a banker of the lawyer must supply the auditor with all the information reasonably necessary for the purposes of the audit.

Penalty: A fine not exceeding K200.00.

## **9. AUDIT REPORTS.**

(1) If an auditor discovers in the course of conducting the audit of a lawyer's trust accounts under this Regulation—

- (a) that the accounts are not kept in such a manner as to enable them to be properly audited; or
- (b) a matter that appears to him to involve dishonesty; or
- (c) a loss or deficiency of trust moneys,

he must fully set out the facts as discovered by him in his report to the Attorney-General, and immediately forward a copy of his report to the Council of Legal Education.

Penalty: A fine not exceeding K200.00.

(2) Except as provided in Subsection (1), the auditor's report shall consist of a certificate stating that the trust accounts of the lawyer have been duly kept and are in order.

## 10. MONEYS HELD BY LAWYERS FOR OTHER PERSONS.

(1) In addition to making his report, an auditor conducting the audit of a lawyer's trust accounts under this Regulation must—

- (a) at the time of making the audit, certify under his hand a statement disclosing in detail (in the statement itself or by reference to the books of account) particulars of all moneys held by the lawyer for or on behalf of any other person on the last day of the year to which the audit relates, together with particulars of the investment of the moneys at that date; and
- (b) deliver the statement to the lawyer.

(2) The lawyer must—

- (a) retain the statement delivered under Subsection (1)(b); and
- (b) on demand by the auditor making the next audit of his trust accounts under this Regulation, produce the statement together with a signed copy of the auditor's report of the preceding audit.

Penalty: A fine not exceeding K200.00.

## 11. DISCLOSURES BY AUDITORS.

An auditor may disclose information obtained in the course of conducting an audit under this Regulation—

- (a) in a report made under this Regulation; and
- (b) in or for the purpose of an inquiry under Section 6 of the *Lawyers' Act* 1986 or of legal proceedings arising out of the report or instituted in connection with the trust accounts of a lawyer whose trust accounts he has audited.

## 12. INSPECTION OF AUDITORS' REPORTS.

(1) Any portion of a report of an auditor under this Regulation relating to the moneys or securities of a person whom the Attorney-General decides has a beneficial interest in the moneys or securities shall be available in the hands of the Attorney-General for inspection by that person or by a lawyer authorized by that person to inspect the report.

(2) A report of an auditor relating to the trust accounts of a lawyer under this Regulation shall be available in the hands of the Attorney-General for inspection by the auditor appointed to audit the accounts of the same lawyer for the next year.

**13. SELECTION AND REMUNERATION OF AUDITORS.**

(1) The auditor by whom the annual audit is to be made under this Regulation shall be selected, by the lawyer whose accounts are to be audited, from the persons authorized by Section 3 to audit trust accounts.

(2) Subject to any written agreement to the contrary between a lawyer and a person for or on behalf of whom moneys are received or held by the lawyer, the cost of auditing the accounts relating to the moneys shall be borne by the lawyer.



**SCHEDULE 1 – STATUTORY DECLARATION.**

Reg., Sec. 4.

I, . . . , of . . . , do solemnly and sincerely declare—

1. That I am a person authorized to audit the trust accounts of lawyers.
  
2. That in accordance with the *Trust Accounts (Lawyers) Regulation* I have personally audited the trust accounts of . . . , a lawyer practicing at . . . , for the year ending 31 July 20...
  
3. That the paper writing annexed to this declaration and marked “A”, dated . . . 20..., and signed by me, is a correct report of the result of the audit.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act* 1962 conscientiously believing the statements contained in it to be true in every particular.

Declared at . . . , on . . . 20...

Before me,

*Trust Accounts (Lawyers) Regulation 1969*