

LEGAL ACCOUNTING HANDBOOK: TRUST MONEY AND TRUST RECORDS

9th Edition: March 2024



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ACCOUNTING
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TRUST MONEY AND
TRUST RECORDS**

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DISCLAIMER

This publication has been produced solely for law practices to provide general information of an introductory nature about Trust Money and Trust Records. It is a general guide only and is not exhaustive of issues which may be encountered. While every care has been taken in the production of this publication, no legal responsibility or liability is accepted, warranted or implied by the authors or the Law Society of New South Wales and any liability is hereby expressly disclaimed.

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1. INTRODUCTION

For accounting and support staff working for legal practitioners in sole practice, a law firm, a community legal service, an incorporated legal practice or an unincorporated legal practice, the necessity to deal with trust money and manage the accounting relating to trust money is an integral part of legal practice.

The Legal Accounting Handbook has been produced to make that process more efficient and to help legal practitioners and their accounting staff reduce their exposure to problems relating to the keeping of accounting records for trust money.

The Legal Accounting Handbook:

- Outlines the basic records that must be maintained when handling various categories of trust money, specifically:
 - money that must be deposited to a general trust account;
 - written direction money;
 - controlled money;
 - transit money;
 - money subject of a power; and
 - in limited situations the investment of trust money which is not involved in financial services or investments.
- Presents an explanation of records required to be kept.
- Details the information required to be recorded in each of these records.
- Explains how each record interacts within the legal accounting system.
- Offers suggestions which, if adopted, should minimise risk and reduce the cost of compliance.
- Reproduces relevant Sections of Part 4.2 of the *Legal Profession Uniform Law (NSW)* relating to trust money and trust accounts and relevant Rules of Part 4.2 of the *Legal Profession Uniform General Rules 2015* relating to trust money and trust accounts, including amendments in force as at 31 December 2019.
- Provides worked examples of trust records commonly used in law practice sole practice – Chapter 21.

1.1 Importance of Record Keeping

It is vital that a law practice's trust records provide a complete historical record of all trust money transactions undertaken. The legislation in force in New South Wales sets out the requirements as to the scope and form of such records.

The creation and maintenance of adequate and effective accounting systems for funds entrusted to a law practice improves the efficiency of legal practice and reduces the risks associated with the handling of funds entrusted to a law practice.

1.2 The Legislative Regime

The *Legal Profession Uniform Law Application Act 2014 (NSW)* applies the text of the Legal Profession Uniform Law as set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014 (VIC)* as the scheme to regulate the legal profession in New South Wales. The scheme as it applies in New South Wales is referred to as the *Legal Profession Uniform Law (NSW)*. The purpose is to establish a uniform legal services market in New South Wales and Victoria.

In New South Wales, the uniform legislative regime consists of the following:

- *Legal Profession Uniform Law (NSW)* (referred to in the Legal Accounting Handbook as the LPUL);
- *Legal Profession Uniform Law Application Regulation 2015 (NSW)* (referred to in the Legal Accounting Handbook as the Regulations);
- *Legal Profession Uniform Law Application Act 2014 (NSW)* (referred to in the Legal Accounting Handbook as the Application Act);

- *Legal Profession Uniform Law Application Amendment Act 2015 (NSW)* (referred to in the Legal Accounting Handbook as the Application Amendment Act);
- *Legal Profession Uniform Rules* which consist of the following (collectively referred to as the Uniform Rules):
 - Legal Profession Uniform General Rules 2015 (referred to in the Legal Accounting Handbook as the LPUGR);
 - Legal Profession Uniform Admission Rules 2015;
 - Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015;
 - Legal Profession Uniform Australian Solicitors' Conduct Rules 2015 (referred to in the Legal Accounting Handbook as the ASCR); and
 - Legal Profession Uniform Legal Practice (Solicitors) Rules 2015 (referred to in the Legal Accounting Handbook as the Solicitors Rules).

The regime commenced on 1 July 2015. The introduction of the above instruments made changes to the previous legislative regime but a law practice's compliance obligations with respect to trust accounts and trust money remain largely unchanged.

The provisions relating to trust accounts are contained in the following sections:

- Part 4.2 of the LPUL – Sections 127 to 168 regarding trust money and trust accounts;
- Part 4.2 of the LPUGR – Rules 33 to 69 regarding trust money and trust accounts;
- Part 4.6 of the LPUGR – Rules 91E to 95A relating to opening and maintaining files and the maintenance of a Register of Files Opened, Register of Safe Custody Documents, and Register of Financial Interests. These registers were previously required to be maintained under the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013;
- Part 5 Division 1 of the Application Act – Sections 46 and 47 regarding statutory deposits;
- Part 3 of the Regulations – Clauses 9 to 12 regarding the calculation of the amount to be maintained on statutory deposit. The calculation of the amount to be held has changed following amendments to clause 12, which provides as follows:

12 APPLICABLE PERIOD

- (1) In clauses 10 and 11, “**applicable period**” means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.
 - (2) However, in relation to a law practice that commences to practise or provide legal services after the commencement of an applicable period, the first applicable period is the period starting on the commencement of the practice or the provision of legal services and ending at the end of the applicable period.
- Part 2 Division 2 of the Application Act – Section 14 regarding unclaimed money and Section 11 regarding the designation of the Law Society Council as the local regulatory authority (except in certain situations);
 - Rule 6 of the Solicitors Rules regarding transfer of a practitioner's practice which was previously Rule 53 of the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013; and
 - Rule 12.3 of the ASCR regarding borrowing from a client which was previously Rule 12.3 of the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013.
 - All Sections referred to in the Legal Accounting Handbook are Sections of the LPUL and all Rules referred to in the Legal Accounting Handbook are Rules of the LPUGR unless otherwise stated.

13 Further Information

If you need help or have any enquiries in regard to trust money or the maintenance of trust records, please contact the Trust Accounts Department of the Law Society of New South Wales on (02) 9926 0337. An officer of the Department will be happy to assist you with your enquiries.

The Law Society of New South Wales' website at www.lawsociety.com.au makes available a list of examined software and an electronic calculator to assist law practices in respect of statutory deposit calculations.

2. TRUST MONEY

2.1 Definition of Trust Money

Section 129(1) defines **trust money** as:

“money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice, and includes—

- (a) money received by the law practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the law practice; and
- (c) transit money received by the law practice; and
- (d) money received by the law practice, that is the subject of a power exercisable by the law practice or an associate of the law practice, to deal with the money for or on behalf of another person.”

Section 153(1) provides that a law practice receives money when:

- (a) the law practice obtains possession or control of it directly; or
- (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
- (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with the money for or on behalf of another person.

Further, Section 153(2) provides that a “law practice or associate is taken to have received money if the money is available to the law practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer”.

See further below regarding the definition of “power”.

The concept of “power exercisable by the law practice or an associate of the law practice, to deal with the money for or on behalf of another person” is elaborated in Section 128(3) to mean a power given to the practice or associate exercisable by:

- (a) the practice alone; or
- (b) an associate of the practice alone (otherwise than in a private and personal capacity); or
- (c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following—
 - (i) one or more associates of the practice;
 - (ii) the person, or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

Section 129(2) specifically excludes as trust money:

- (a) money received by a law practice for legal services that have been provided and in respect of which a bill has been given to the client;
- (b) money entrusted to or held by a law practice for or in connection with—
 - (i) a managed investment scheme; or
 - (ii) mortgage financing; undertaken by the law practice;
- (c) money received by a law practice for or in connection with a financial service it provides in circumstances where the law practice or an associate of the law practice—
 - (i) is required to hold an Australian Financial Services Licence covering the provision of the service; or
 - (ii) provides the financial service as a representative of another person who carries on a financial services business.

However, pursuant to Section 129(2)(d) money received by a law practice for investment purposes is treated as trust money if:

- (i) the law practice received the money in the ordinary course of legal practice and primarily in connection with the provision of legal services at the direction of the client; and
- (ii) the investment is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the money or property.

It should be noted that Section 134 requires that “if a law practice receives or holds money that is non-trust money (other than money for the payment of legal costs due to the law practice), it must give the person who provided the money written notice that:

- (a) the money will not be treated as trust money; and
- (b) the money is not subject to the provisions relating to trust money in this Law or the Uniform Rules; and
- (c) a claim against the fidelity fund of this jurisdiction cannot be made in respect of the money.

22 What is Trust Money?

The definition of trust money has three core elements;

- (i) **money**;
- (ii) **entrusted** to a law practice;
- (iii) in the **course** of or in **connection** with the provision of legal services by a law practice.

If the “money” has all the above elements, then it is “trust money” to which Section 129(1) applies. The term “entrusted” is not defined in the LPUL. However, the use of the word “entrusted” in the definition reinforces the general belief that trust money is not merely given or delivered to a law practice; it is placed in its “care and protection” to be held for or on behalf of another person.

The terms used are defined at Section 6 as:

- **law practice** means:
 - (a) a sole practitioner; or
 - (b) a law firm; or
 - (c) a community legal service; or
 - (d) an incorporated legal practice; or
 - (e) an unincorporated legal practice.
- **associate of a law practice** means a person who is one or more of the following:
 - (a) a principal of the law practice;
 - (b) a partner, director, officer, employee or agent of the law practice;
 - (c) an Australian legal practitioner who is a consultant to the law practice.
- **legal services** means work done, or business transacted, in the ordinary course of legal practice.
- **power** in relation to trust money, includes an authority.
- Section 47(2) requires that an Australian practising certificate granted in this jurisdiction is subject to a condition, as determined by the designated local regulatory authority, that the holder is authorised or not authorised to receive trust money (see paragraph 2.3 of the Legal Accounting Handbook for further information).

Section 137 directs that a law practice must deposit trust money (other than cash) into the law practice’s general trust account as soon as practicable after receiving it **unless**:

- the law practice has a **written direction** by a person legally entitled to provide it to deal with the money otherwise than by depositing it in the general trust account and that is not controlled money: Section 137(a) and Rule 34. This is defined in Rule 34 as “**written direction money**”.

Section 143(1) provides that written direction money received in the form of cash must be deposited in the general trust account as soon as practicable after receiving it before it is otherwise dealt with in accordance with the direction (or instructions) relating to the money, regardless of anything to the contrary in the direction (or instructions).

- the money is **transit money** received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the law practice (Section 128) in which case the law practice must pay or deliver the money:
 - (a) within the period specified in the instructions (if any); or
 - (b) subject to paragraph (a), as soon as practicable after it is received: Sections 140(1) and 137(b).
 Section 143(1) provides that transit money received in the form of cash must be deposited in the general trust account as soon as practicable after receiving it before it is otherwise dealt with in accordance with the instructions relating to the money.
- the money is **controlled money** received or held by a law practice in respect of which the law practice has a written direction to deposit the money in an account (other than a general trust account) with an *authorised deposit taking institution (ADI)* over which the law practice has or will have exclusive control: Sections 128 and 137(b).
Section 143(2) provides that controlled money received in the form of cash must be deposited in a controlled money account.
- the money is the subject of a **power** given to the practice or an associate of the practice to deal with the money for or on behalf of another person which is referred to in the Legal Accounting Handbook as “**power money**”: Section 137(c). A law practice that exercises a power to deal with trust money must deal with the money only in accordance with the power relating to the money: Section 141(1).
Section 143(1) provides that money the subject of a power that is received in the form of cash must be deposited in the general trust account (or in the case of controlled money, a controlled money account) before it is otherwise dealt with in accordance with the power.

The simple rule is that all trust money received in the form of cash must be deposited to the general trust account or, if directed in writing, a controlled money account before it is otherwise dealt with, regardless of anything to the contrary in the direction or instructions.

When a law practice receives cash in a transaction valued at AUD \$10,000 or more, it is required by the *Financial Transactions Reports Act 1988 (Cth)* to report the transaction to Austrac. The law practice must contact Austrac on 1300 021 037 or by email on help_desk@austrac.gov.au and enquire about how to report significant cash transactions.

Although the term General Trust Account Money is not defined in the LPUL it is used in the Legal Accounting Handbook to describe trust money that is received which must be deposited to a general trust account at an authorised ADI in New South Wales.

ADI means an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)*: see definition in Section 6. **Note:** a general trust account must be held with an **authorised** ADI. That is, an ADI authorised to maintain trust accounts to hold trust money pursuant to Section 149. A controlled money account must be maintained at an ADI. A list of **authorised** ADI's can be found on the Law Society of New South Wales website at www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-funds/authorised-deposit-taking-institutions

A list of ADI's can be found on the Australian Prudential Regulation Authority's website at apra.gov.au/industries/authoriseddeposit-takinginstitutions

23 Authorised to Receive Trust Money

Section 150 states:

A law practice must not receive trust money unless:

- (a) a principal of the law practice holds an Australian practising certificate authorising the receipt of trust money; or
- (b) the law practice is otherwise authorised to receive trust money under the Uniform Rules.

A principal's practising certificate issued under the LPUL will be issued with a condition that allows the principal to receive trust money unless this condition is removed by the Law Society Council. A non principal practising certificate will be issued with the condition that the person is not authorised to receive trust money on their own account.

Section 153 provides that a law practice receives money when:

- (a) the law practice obtains possession or control of it directly; or
- (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
- (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with the money for or on behalf of another person

Further, Section 135(2) provides that trust money held by a law practice may be dealt with only by the law practice or an associate of the law practice.

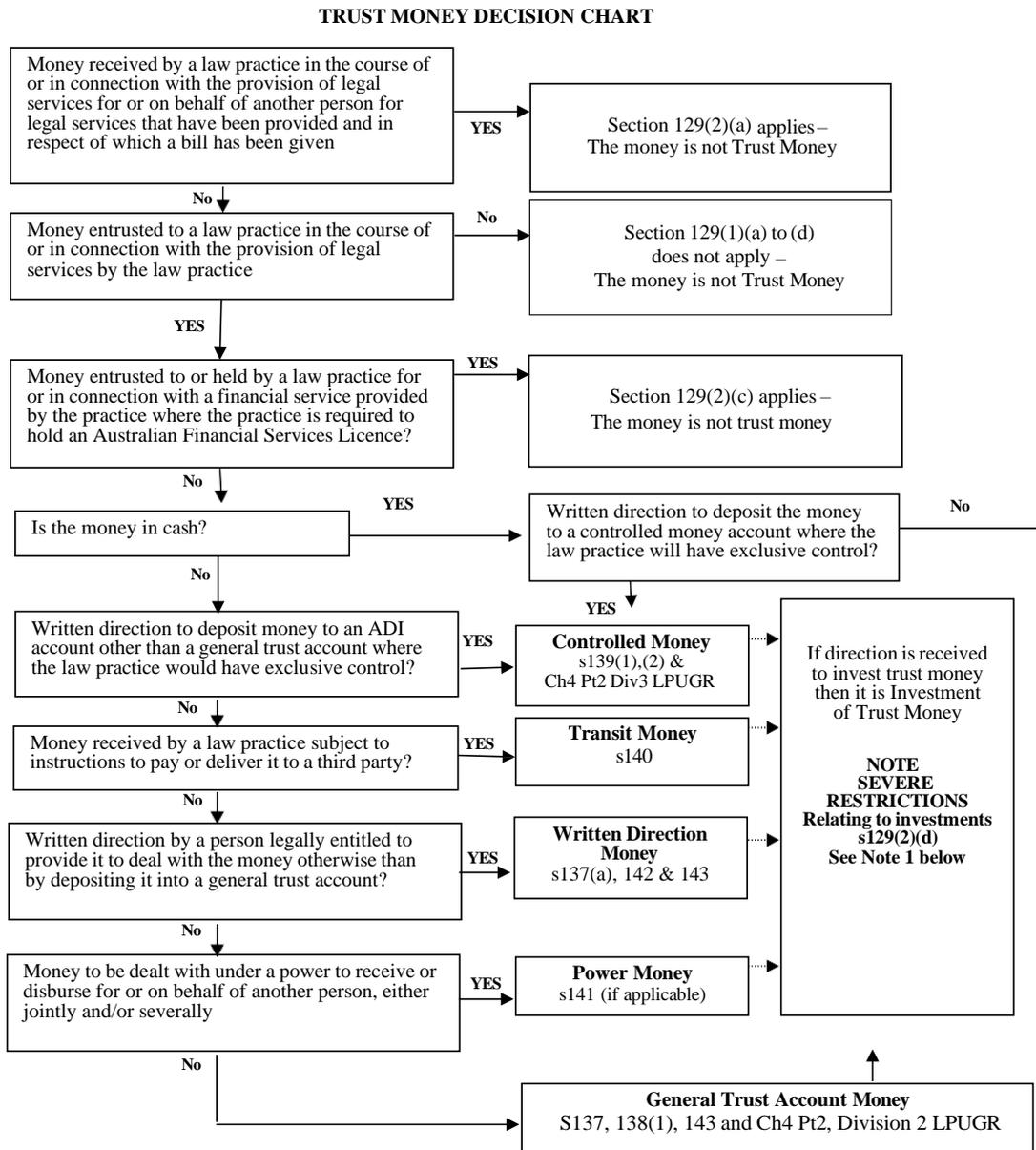
An associate of a law practice is defined in Section 6 as a person who is one or more of the following:

- (a) a principal of the law practice;
- (b) a partner, director, officer, employee or agent of the law practice;
- (c) an Australian legal practitioner who is a consultant to the law practice.

It is the view of the Trust Accounts Department that provided a law practice has a principal with a practising certificate authorising the receipt of trust money then any associate of the law practice may receive trust money on behalf of the law practice and account to the law practice for the trust money.

24 Trust Money Decision Chart

The Trust Money Decision Chart has been designed to assist in the identification of money received by a law practice. The steps identified need to be followed for each receipt of money into a law practice. The chart is displayed below.



Note 1: To invest trust money the investment must be:

- in the ordinary course of legal practice, and
- primarily in connection with the provision of legal services at the direction of the client, and
- the investment is (or is to be made) in the ordinary course of legal practice, and
- for the ancillary purpose of maintaining or enhancing the value of the money or property

3. DEALING WITH TRUST MONEY - GENERALLY

The specific requirements for money that must be deposited into a general trust account, controlled money, money subject of a power, transit money, written direction money and the investment of trust money are discussed separately in the Legal Accounting Handbook. Below is a brief overview of these specific categories of trust money.

3.1 Holding, Disbursing and Accounting for Trust Money

3.1.1 General Trust Money

Section 138(1) provides that a law practice must:

- (a) hold trust money deposited in the law practice's general trust account **exclusively** for the person on whose behalf it is received; and
- (b) **disburse** the trust money only in accordance with a **direction given by the person**.

However, this is subject to an order of a court of competent jurisdiction or as authorised by law: Section 138(2).

Section 138(3) provides that a law practice must account for the money as required by the Uniform Rules.

3.1.2 Controlled Money

Section 139 provides that a law practice must:

- (a) as soon as practicable after receiving controlled money, deposit the money in the account specified in the **written direction** relating to the money (i.e. a controlled money account); and
- (b) hold controlled money deposited in a controlled money account **exclusively** for the person on whose behalf it is received; and
- (c) **disburse** the trust money only in accordance with the original written direction relating to the money or a later written direction given by or on behalf of the person on whose behalf the money was received (subject to a court order or as authorised by law: Section 139(3)); and
- (d) **account** for the controlled money as required by the Uniform Rules.

3.1.3 Power Money

Section 141(1) provides that a law practice must ensure that trust money (other than cash) that is subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money.

Section 141(2) provides that the law practice must account for the money in the way specified in the Uniform Rules.

3.1.4 Transit Money

Section 140 provides that a law practice must pay or deliver the money as required by the instructions relating to the money within the period (if any) specified in the instructions, or if the period is not specified, then as soon as practicable after it is received.

The law practice must record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received: Section 140(2). The record must be kept for 7 years: Section 140(3)

3.1.5 Written Direction Money

Section 142 provides that a law practice that receives a written direction (by a person legally entitled to provide it – see Section 137(a)) to deal with trust money (other than cash) in a particular way must comply with that direction within the period specified in the direction, or if the period is not specified, then as soon as practicable after it is received. The law practice must keep the written direction for 7 years after finalisation of the matter to which the direction relates.

3.2 Intermixing Trust Money - Section 146

The law practice is prohibited from mixing trust money with any other money unless authorised to do so by the Law Society Council, being the designated local regulatory authority. The practice must not deposit trust money in to an account holding non-trust money. Conversely, the practice must not deposit non-trust money to an account holding trust money.

3.3 Withdrawing Legal Costs from Trust Money - Section 144(2)(b)

A law practice may withdraw trust money held in the general trust account or in a controlled money account for payment to the law practice's account for legal costs owing to the practice if the relevant procedures are followed.

Legal costs are defined in Section 6 as amounts that a person or a third party payer “*has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services ... including disbursements but not including interest.*”

The relevant procedures are detailed in Rule 42 which prescribes four methods for withdrawing legal costs, these being:

3.3.1 Method 1 – Withdrawal on Issue of Bill of Costs or Money Legally Payable – Rule 42(3)

The law practice may withdraw the trust money:

- (a) if the law practice has given the person a bill relating to the money and referring to the proposed withdrawal; **and**
- (b) if the person does not, at the end of the period of 7 business days after the person was given the bill, object to the amount specified in the bill; **or**
- (c) if the person objects but has not referred the matter to the designated local regulatory authority - NSW Commissioner or for costs assessment, and the period of 30 days after the later of the following dates has expired:
 - (i) the date on which the person was given the bill;
 - (ii) the date on which the person received an itemised bill following a request made in accordance with Section 187; **or**
- (d) if the money otherwise becomes legally payable.

Note: The term “bill” is not defined in the LPUL or LPUGR. However, Division 5 of Part 4.3 of the LPUL prescribes the form of and the particulars to be included in the bill. Rule 73 also provides for the giving of bills.

The term “*referring to the proposed withdrawal*” is a new concept to the withdrawal of trust money for legal costs. The Trust Accounts Department suggests that the term “*referring to the proposed withdrawal*” requires the law practice to include in the footer of the bill a statement to the effect “*It is intended to withdraw the above amount from money held in your trust ledger at the expiration of 7 business days from the date of this bill unless an objection is received.*”

A bill given by a law practice must be signed by a principal of the law practice designated in the bill as the responsible principal for the bill or nominate a principal of the law practice as the responsible principal for the bill. If a principal does not sign or is not nominated as the responsible person, each principal of the law practice is taken to be responsible for the bill.

The bill issued to the client must include or be accompanied by a written statement setting out:

- (a) the avenues that are open to the client in the event of a dispute in relation to legal costs; **and**
- (b) any time limits that apply to the taking of any action referred to above.

3.3.2 Method 2 – Withdrawal with Authority – Rule 42(4)

The law practice may withdraw the trust money (whether or not the law practice has given the person a bill relating to the money):

- (a) if the money is withdrawn in accordance with instructions that have been received by the law practice and that authorise the withdrawal, **and**
- (b) if, before effecting the withdrawal, the law practice gives or sends to the person:
 - (i) a request for payment, referring to the proposed withdrawal; **or**
 - (ii) a written notice of withdrawal.

Rule 42(7)(a) provides that where the authorisation authorises withdrawal of part only of the money, the law practice may withdraw the money to that extent only. If the law practice has given the person a bill relating to the money in accordance with Method 1 above, Subrule 42(4)(b) is taken to apply to the remaining part of the amount specified in the bill.

Rule 42(7)(b) provides that if the instruction is given in writing, it must be kept as a permanent record or if not given in writing, it must be confirmed in writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.

The word “confirmed” is not defined in the LPUL or LPUGR. However, it is the Trust Accounts Department’s view that the law practice must initiate correspondence confirming the authority to disburse the money. A copy of that correspondence should be kept in the matter file.

3.3.3 Method 3 – Withdrawal for Reimbursement – Rule 42(5)

The law practice may withdraw the trust money:

- (a) if the money is owed to the law practice by way of reimbursement of money already paid by the law practice on behalf of the person; **and**
- (b) if, before effecting the withdrawal, the law practice gives or sends to the person:
 - (i) a request for payment, referring to the proposed withdrawal; **or**
 - (ii) a written notice of withdrawal.

Rule 42(8) provides that money is taken to have been paid by the law practice on behalf of the person when the relevant account of the law practice has been debited. The Trust Accounts Department’s view is that the cheque drawn to pay the disbursement must be debited to the law practice’s office bank account to confirm that the money is already paid.

3.3.4 Method 4 – Withdrawal for a Commercial or Government Client – Rule 42(6)

The law practice may withdraw the trust money:

- (a) if the law practice has given the person who is a commercial or government client a bill specifying the amount payable by the person; **and**
- (b) the money is withdrawn in accordance with a costs agreement between the law practice and the person; **and**
- (c) the costs agreement complies with the legislation under which it is made and authorises the withdrawal; **and**
- (d) before effecting the withdrawal, the law practice gives or sends to the person a request for payment, referring to the proposed withdrawal.

Section 170(2) defines a commercial or government client as a client of a law practice where the client is:

- (a) a law practice; or
- (b) one of the entities referred to in Section 170(2)(b) and as defined or referred to in the Corporations Act (which have not been listed in the Legal Accounting Handbook); or
- (c) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not any such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
- (d) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
- (e) a body or person incorporated in a place outside Australia; or
- (f) a person who has agreed to the payment of costs on a basis that is the result of a tender process; or
- (g) a government authority in Australia or in a foreign country; or
- (h) a person specified in, or of a class specified in, the Uniform Rules.

3.3.5 Costs Disclosure - Division 3 of Part 4.3

Costs disclosure requirements are contained in Division 3 of Part 4.3 - Sections 174 to 178 of the LPUL and they must be strictly complied with. If a law practice does not disclose to a client or an associated third party payer anything required by this Division, the client or associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined by the NSW Commissioner, being the designated local regulatory authority in these situations: Section 178(1)(b).

Moreover, if the law practice fails to comply with the costs disclosure requirements, the costs agreement is void, the law practice must not commence or maintain proceedings for the recovery of any or all of the legal costs until they have been assessed or any costs dispute has been determined by the NSW Commissioner, being the designated local regulatory authority in these situations, or under jurisdictional legislation, and the failure to disclose is capable of being unsatisfactory professional conduct or professional misconduct: Section 178(1)(a), (c) & (d).

Disclosure is not required in certain circumstances: Section 174(4). The \$750 (exclusive of GST and disbursements) threshold, under which disclosure is not required, has not been increased in the LPUL or LPUGR.

3.3.6 Costs Agreements - Division 4 of Part 4.3

The requirements concerning costs agreements are contained in Division 4 of Part 4.3 - Sections 179 to 185 of the LPUL. A client of a law practice has the right to require and to have a negotiated costs agreement with the law practice, the costs agreement must be in writing or evidenced in writing and may consist of a written offer that is accepted in writing or (except in the case of a conditional costs agreement) by other conduct: Sections 179 & 180.

A conditional costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate (except in respect of a matter that involves criminal proceedings, Family Law Act 1975 proceedings, and proceedings for the purposes of Section 181).

A conditional costs agreement must:

- (a) be in writing and in plain language;
 - (b) set out the circumstances that constitute the successful outcome of the matter to which the costs relate;
 - (c) be signed by the client;
 - (d) include a statement that the client has been informed of the client's rights to seek independent legal advice before entering into the agreement; and
 - (e) contain a cooling-off period of not less than five clear business days during which the client, by written notice, may terminate the agreement:
- Section 181.

A costs agreement for contingency fees is prohibited. A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates, and a contravention of this requirement is capable of being unsatisfactory professional conduct or professional misconduct: Section 183.

A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void. A law practice is not entitled to recover any amount in excess of the amount that it would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received. A law practice that has entered into a costs agreement in contravention of Section 183 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received: Section 185.

3.3.7 Costs Recovery - Section 129(2)

According to Section 129(2)(a) money received by a law practice for legal services that have been provided and in respect of which a bill has been given to the client is not trust money for the purposes of the LPUL.

It follows that in relation to money held in a law practice's general trust account or controlled money account on account of legal costs for which legal services have been provided and a bill has been given, the law practice should as soon as practicable withdraw the money in accordance with Rule 42. Any delay will be mixing trust money with non-trust money and therefore a breach of Section 146.

3.3.8 Authority to withdraw costs from general trust account or controlled money account is essential

Complaints concerning costs have represented a very high proportion of complaints from persons dealing with law practices. Historically, it was far more onerous for a law practice to obtain a person's "authority" prior to taking costs from a law practice's general trust account or controlled money account.

The process of taking costs from a trust account has been streamlined under the LPUL. For example, as method 2 (Chapter 3.3.2) indicates, it is possible for a law practice to obtain a person's authority to transfer costs from the general trust account or a controlled money account, at the commencement of a legal matter. If, a person's authority is stated in a costs agreement, the agreement must comply with the legislation under which it is made and that authorises the withdrawal. The practice must also send to the person a request for payment (e.g. a bill), referring to the proposed withdrawal, or a written notice of withdrawal before the withdrawal is effected.

Care should be exercised to ensure that a person's authority to transfer costs from a general trust account or a controlled money account has been obtained for the transfer and for the appropriate amount.

A transfer without authority constitutes a failure to hold a person's funds in accordance with Sections 138(1) or 139(2). Consequently, such conduct is capable of being unsatisfactory professional conduct or professional misconduct under Section 298.

The form of authority to transfer is not prescribed and is not required to be in writing. However, Rule 42(7) (b) requires oral authority to be confirmed in writing either before or not later than 5 working days after the law practice effects the withdrawal (also see 3.3.2 for more information).

3.4 Deficiency in Trust Account

Section 148 prohibits a law practice, an Australian legal practitioner or any other person from causing a deficiency ("debit balance") in any trust account (which includes a controlled money account kept at an ADI) or trust ledger account without reasonable excuse. The word "deficiency" is not defined in the LPUL. Under the previous legislative regime "deficiency" was defined as including "*the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account*". The Trust Accounts Department will continue to adopt this definition.

The Trust Accounts Department understands that some debit balances may represent administrative errors. For example, when a cheque is drawn and processed for an incorrect amount, a trust cheque is drawn for office expenses, or incorrect additions of the trust ledger account.

Law practices should be particularly careful in ensuring their trust records are up to date and transactions are posted to the trust ledger account as prescribed by the LPUGR, that is, within 5 working days. It is imperative that errors are corrected as soon as practicable so that the records disclose that prompt action was taken to rectify the error.

Section 154(1) requires a legal practitioner associate (e.g. principal, partner, employed solicitor) to give written notice to the Law Society Council, being the designated local regulatory authority, when the practitioner becomes aware that there is an irregularity (e.g. “debit balance”) in any of the law practice’s trust accounts or trust ledger accounts. It should be noted that an ADI is also required by Section 154(1) to report any deficiency in a trust account to the Law Society Council.

The appropriate notification is a letter/email to the Chief Trust Account Investigator advising of the reason(s) for the irregularity and evidence of its rectification.

In addition, Section 154(2) requires that, if an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to the Law Society Council, being the designated local regulatory authority.

It should be noted that Section 466 provides that a person must comply with Section 154 despite any claim for legal professional privilege or any other duty of confidence and is not excused from compliance on the ground that compliance may tend to incriminate the person. Further, a failure of an Australian lawyer or Australian-registered foreign lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.

3.5 False Names in Trust Records

Section 147(3) provides that a law practice must not knowingly receive money or record the receipt of money in the law practice’s trust records under a false name.

If a law practice is aware that a person on whose behalf trust money is received by the law practice is commonly known by more than one name, the law practice must ensure that the law practice’s trust records record all names by which the person is known. The Trust Accounts Department suggests that the person’s known aliases should at a minimum be recorded when opening or amending the client details in the relevant trust account ledger or record for trust money.

3.6 Unclaimed Money

It is not uncommon for a law practice to have balances in a general trust account and controlled money account relating to people who cannot be located. This may result from clients moving from their original place of residence and not advising the practice. Sometimes, considerable time is required to locate the individuals concerned. It is important to minimise the amount of time taken in this follow-up, and to reinforce the importance of clearing all amounts from the trust account as soon as possible.

The law practice should document and enforce file closure procedures so that a file is not closed until all balances have been cleared and there are no unrepresented cheques relating to the matter in the trust or office bank reconciliation statement.

When the law practice considers that money in a trust account may represent “unclaimed moneys”, certain procedures must be followed by the law practice.

Section 167 provides that unclaimed money is to be dealt with in accordance with jurisdictional legislation, or the Uniform Rules if jurisdictional legislation so provides. Section 14 of the Application Act provides that:

- (1) This Section provides for how unclaimed money in a trust account is to be dealt with, as contemplated by Section 167 of the *Legal Profession Uniform Law (NSW)*.

- (2) If a law practice holding money in a trust account cannot find the person on whose behalf the money is held or a person authorised to receive it, the practice may:
 - (a) pay the money to the Treasurer for credit to the Consolidated Fund, and
 - (b) provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held by the practice.
- (3) If a law practice pays money to the Treasurer under Subsection (2), the practice is relieved from any further liability in relation to the money.
- (4) The Treasurer must pay money deposited under this Section to a person who satisfies the Treasurer as to his or her entitlement to the money.

Sub-sections (5), (6) and (7) are not included in the Legal Accounting Handbook.

This Section does not require the law practice to pay the money to the Treasurer. Section 14 of the Application Act states that the practice “may” pay the money to the Treasurer. In other words, there is no obligation on the practice to do so. However, it is recommended that old balances be reviewed and, if applicable, removed from the trust ledger account or record.

Unclaimed funds may be paid to the Treasury using the procedures noted on the Revenue NSW website: <https://www.revenue.nsw.gov.au/unclaimed-money/lodge>

3.6.1 Money in Dispute

A law practice that has money under its control as trustee; and

- (i) is satisfied that the money is disputed by the parties; and
- (ii) that reasonable efforts have been made to resolve the matter;

may pay it into court pursuant to Section 95 of the Trustee Act 1925 (NSW). Further information can be found in Part 55 of the Uniform Civil Procedure Rules 2005.

4. ACCOUNTING OVERVIEW

The following is a review of the basic accounting records to be maintained by a law practice in accordance with the LPUL and the LPUGR. The table headed “Overview of Trust Records and Office Account Records” below details all the records that the LPUGR require to be maintained for trust money. The heading “Office” has been included to assist bookkeepers commencing an office accounting system. A law practice’s office accounting system should be discussed with an external accountant as soon as possible after deciding to operate a law practice.

To assist practitioners in understanding the maintenance of trust records, a worked example in the name of Philpott & Associates has been included at Chapter 21.

4.1 Overview of Trust Records and Office Account Records

The Trust Records to be kept by a law practice for the various types of trust money are:

Overview of Trust Records and Office Account Records				
Type of Money	Source Records	Book of Prime Entry	Book of Summary	Reports
General Trust Money	Bank (authorised ADI) Receipts Receipts Butts EFT Payment Advices Cheque Requisitions Office Requisitions EFT Payment Requisitions Bank Payment Advices Journal Authorisations Bills of Costs Bank (authorised ADI) Statements Journal Authorisations Electronic Conveyancing (such as PEXA) Documentation Correspondence Dockets	Trust Account Receipts Cash Book Trust Account Payments Cash Book Trust Transfer Journal	Trust Ledger Account	Trust Trial Balance Statement Trust authorised ADI Reconciliation Statement Trust Account Statement
Controlled Money	Correspondence Bills of Costs Copy of cheques Written direction Controlled money Written direction receipts Bank (ADI) statements Bank (ADI) deposits Bank (ADI) statements Bank (ADI) withdrawal Initiating record for withdrawal	Controlled Money Register	Controlled Money Movement Record	Controlled Money Accounts Listing Trust Account Statement
Transit Money	Transit money records may include: Copy of cheque Settlement sheet Payment direction for other party Payment correspondence Receipt from payee	Nil	Nil	Nil
Written Direction Money	Written direction	Nil	Nil	Nil
Power Money	Power of attorney/Probate or other authority Bank statements Cheque butts EFT Payment Advices EFT Receipts Bank Deposits All supporting documents in relation to the dealings	Power Money Record (Record of all dealings) Register of Powers and Estates (in certain instances)	Nil	Trust Account Statement
Investment of Trust Money	Written direction evidencing the investment All supporting documents in relation to the investment	Investment Record	Nil	Trust Account Statement

The Records normally maintained by a law practice for the recording of office/general account transactions are:

Office/ General Money	Source Records	Book of Prime Entry	Book of Summary	Reports
Office	Receipts Duplicates ADI Deposits Cheque Butts EFT Payment Advices Journal Input Sheets Invoices (Bills of Costs) Invoices (Third Parties) Petty Cash Dockets Photocopy Register Time Costing Register Fax Register Wages Records ADI Statements	Receipts Cash Book Payments Cash Book Petty Cash Book General Journal Costs Journal	* Ledgers * General * Subsidiary * Accounts * Receivable * Disbursements	General Ledgers Subsidiary Ledgers: * General * Accounts Receivable (Debtors) * Disbursements * Accounts Payable (Creditors)

5. TRUST RECORDS

5.1 Keeping of Trust Records – Section 147

Section 147 provides that a law practice must keep in permanent form trust records in relation to trust money received by the law practice. The law practice must keep the trust records:

- (a) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
- (b) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and
- (c) for a period of 7 years after the last transaction entry in the trust record, or the finalisation of the matter to which the trust record relates, whichever is the later; and
- (d) in accordance with the Uniform Rules: Section 147(2). This requires the records to be:
 - (i) kept up to date, with transactions posted on a regular basis. For example, Rule 47(4)(b) requires particulars of a receipt, payment or transfer of trust money to be recorded in the trust ledger account within 5 working days of the day the receipt was made out, the payment was made or the transfer was effected, respectively.
 - (ii) produced on a timely basis. That is, the trust authorised ADI reconciliation statement and the list of the practice's trust ledger accounts (trust trial balance statement) must be prepared within 15 working days after each month end.

Trust records may be kept separately for a branch office at the branch provided the Law Society is notified: Section 136(2).

Section 128 defines trust records to include the following documents:

- (a) receipts;
- (b) cheque butts or cheque requisitions;
- (c) records of authorities to withdraw by electronic funds transfer;
- (d) deposit records;
- (e) trust account ADI statements;
- (f) trust account receipts and payments cash books;
- (g) trust ledger accounts;
- (h) records of monthly trial balances;
- (i) records of monthly reconciliations;
- (j) trust transfer journals;
- (k) statements of account as required to be furnished under the Uniform Rules;
- (l) registers required to be kept under the Uniform Rules;
- (m) monthly statements required to be kept under the Uniform Rules;
- (n) files relating to trust transactions or bills of costs or both;
- (o) written directions, authorities or other documents required to be kept under this Law or the Uniform Rules;
- (p) supporting information required to be kept under the Uniform Rules, in relation to powers to deal with trust money.

52 General Provisions of the LPUGR relating to Trust Money

The following sections will provide a general overview of requirements in the LPUGR that would apply to trust money in general.

52.1 Trust Account Statements

A trust account statement is the accounting report to inform persons for whom or on whose behalf trust money is held or controlled by the law practice. It provides the person on whose behalf the money is held with a full accounting history and current trust balance relevant to their matter. In terms of general trust money the trust account statement is similar in presentation and detail to that reported in the trust ledger account.

Rule 52 provides that a law practice must give a trust account statement to each person for whom or on whose behalf trust money (other than transit money and written direction money) is held or controlled by the law practice or an associate of the law practice.

52.1.1 A separate trust account statement must be given for each:

- (a) trust ledger account – for general trust account;
- (b) record of controlled money movements – for controlled money;
- (c) record of dealings with the money that is the subject of a power to which the law practice or an associate of the law practice is a party – for power money.

52.1.2 A trust account statement must contain particulars of:

- (a) all the information required to be kept under the Uniform Law or LPUGR in relation to the trust money included in the relevant ledger account or record; and
- (b) the remaining balance (if any) of the money.

52.1.3 The law practice must give a trust account statement as soon as practicable after:

- (a) completion of the matter to which the ledger account or record relates; and
- (b) the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; and
- (c) 30 June each year, unless exempted by the provisions of Rule 52(5) or (6).

The terms “given” and “as soon as practicable” are not defined in the LPUGR. It is the Trust Accounts Department’s view that the method of giving a bill of costs to a client as regulated by Section 189 and Rule 73 may be used to define how a trust account statement can be given to the person on whose behalf trust money is held or controlled.

In relation to the term “as soon as practicable”, the following provides some guidance to the meaning of the phrase.

The trust account statement is a reflection of the transactions in the trust ledger account and the validity of the trust ledger account is generally not confirmed until the trust authorised ADI reconciliation statement and the trust trial balance statement have been completed. These are required to be completed within 15 working days of each month end. It is therefore probable that the trust account statement required to be given "as at 30 June" would not reasonably have to be given until mid to late July each year.

A law practice’s ability to give statements promptly may depend on factors including:

- size of the ledger;
- accounting facilities;
- staff numbers.

A sample trust account statement is included in the worked example at Chapter 21.

5.2.14 Exemptions from giving trust account statements at the end of June each year

Rule 52(5) provides that the law practice is not required to give a trust account statement under Rule 52(4) (c) in respect of a ledger account or record if at 30 June the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months.

Rule 52(6) provides that the law practice is also not required to give a trust account statement under Rule 52(4) in respect of a ledger account or record if at 30 June 2015:

- (a) the ledger account or record has been open for less than 12 months; **or**
- (b) a trust account statement has been furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.

However, Rule 52(6) expired immediately before 1 July 2016.

It should be noted that Rule 53 provides an exemption to Rule 52 if the client is a commercial or government client to the extent to which the client directs the law practice not to provide trust account statements under that Rule. However, the client may direct the law practice to give a statement on a different basis from that prescribed by Rule 52 to which the law practice must comply unless the direction is unreasonably onerous.

5.2.15 Details to be included in trust account statements

As noted above in Rule 52(3), the detail to be shown in a trust account statement is the same as the information required to be kept in a *ledger account or record* and the remaining balance (if any) of the money.

5.3 Computerised Accounting Systems – Rules 38 to 41

5.3.1 Introduction

These Rules apply where a law practice maintains trust records by means of a computerised accounting system. It is recommended that users refer to the Law Society website to confirm whether their software has been certified by the Law Society. Alternatively, contact their supplier/distributor.

Existing software may need to be modified or developed to meet the requirements in the LPUGR. Enquiries concerning computer systems controls should be directed to the Chief Trust Account Investigator, Trust Accounts Department.

Briefly, the intention of the LPUGR is to provide:

- (a) compulsory copies of certain trust records to be kept, in printed form or in readable and printable form each month, provided the law practice ensures that copies of the trust records cannot be modified after printing;
- (b) file maintenance audit trails;
- (c) exception reports/audit trails for debit balances processed;
- (d) controls over deletion of ledger accounts;
- (e) page numbering and entry processing requirements;
- (f) compulsory input requirements;
- (g) backup facility requirements.

5.3.2 Examined Software Packages

The overall requirement for law practices in New South Wales is that their trust accounting records must comply with the Uniform Law. The Trust Accounts Department offers the facility of examining software packages at the request of suppliers. This examination does not extend to the "office" portion of a package. The purchase of examined software is not compulsory and a law practice can purchase a "non-examined" package if the practice is satisfied that the software provides the capacity to comply with the legislation.

Trust accounting software packages that have been examined and certified by the Trust Accounts Department as complying systems under the Uniform Law are listed on the New South Wales Law Society's website at <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/trust-accounting-software>.

The certificate issued contains an opinion as to the software's capability to comply with the Uniform Law if it is competently and properly operated. The certificate may be subject to qualifications and/or exclusions and it is recommended that any prospective purchaser review the certificate for any such qualifications and/or exclusions. Some of the examined packages will also need to be correctly set up for New South Wales, which should be confirmed with the supplier prior to installation. The Trust Accounts Department does not recommend one package over another.

5.3.3 Monthly Procedures

Rule 38 provides that, in respect of a law practice that maintains trust records by means of a computerised accounting system, the practice must maintain and keep, in printed form or in readable and printable form, the following copies of trust records as at the end of each named month:

- trust authorised ADI reconciliation statement
- trust trial balance statement
- trust account receipts and payments cash books
- controlled money listing

The law practice must ensure that if the records are in readable and printable form, they cannot be modified afterwards: Rule 38(5).

The law practice must have these documents in printed form or in readable and printable form no later than 15 working days after the end of month, as the LPUGR require that the trust authorised ADI reconciliation statement and trust trial balance statement be prepared within that time.

It is recommended that the following documents are kept in printed form or in readable and printable form at the end of each month:

- trust transfer journal
- file maintenance audit journal

After completing these monthly procedures, the law practice must backup its computer accounting system's data file into a recording media, to be stored at an off-site location.

5.4 Records to be in permanent form

The records prepared by the law practice must be in "permanent form" as required by Section 147. Permanent form is defined in Section 128 to mean "printed or, on request, capable of being printed, in English on paper or other material". Records should not be kept in pencil as this allows for alteration.

6. GENERAL TRUST ACCOUNT

6.1. Maintain General Trust Account in NSW

Pursuant to Section 137, when a law practice receives trust money (other than cash) it must deposit it to a general trust account unless the trust money falls into one of the specific exclusions as detailed in Section 137(a) to (c) and discussed in Chapter 2 of the Legal Accounting Handbook. The law practice must establish and maintain in accordance with the LPUGR a general trust account at an authorised ADI in New South Wales.

A law practice must deposit all trust money received in the form of cash (other than controlled money) in the general trust account, even if it has a written direction to deal with it in some other way. Once deposited, the money may be dealt with in accordance with the written direction: Section 143.

6.1.1 Holding, Disbursing and Accounting for General Trust Money - Section 138

Section 138(1) provides that a law practice must:

- (a) hold trust money deposited in the law practice's general trust account exclusively for the person on whose behalf it is received; and
- (b) disburse the trust money only in accordance with a direction given by the person.

However, this is subject to an order of a court of competent jurisdiction or as authorised by law: Section 138(2).

The law practice must account for the trust money as required by the Uniform Rules: Section 138(3).

6.2 General Trust Account Records

The LPUL and LPUGR prescribe the general trust account records to be kept by the law practice. The following broad headings are useful to describe the function of the various records.

6.2.1 Source Records

Source records are the original documentation produced to capture the relevant details of a transaction. It is from the source records that the remainder of the accounting records are produced. Source documents are important because, if relevant data is not captured at this point, it becomes impossible to complete the secondary records. Common examples of source documents within the general trust account accounting system are duplicate trust receipts, cheque butts, cheque requisitions, EFT payment requisitions, EFT payment advices from the authorised ADI, journal transfer authorisations, invoices, bills of costs, deposit slips, authorised ADI statements and electronic conveyancing (such as PEXA) documentation.

6.2.2 Books of Prime Entry

Books of prime entry are normally referred to as journals. The function of these records within the general trust account system is to classify transactions, that is, receipt, receipt reversal, payment, payment reversal or "non cash" entries. The three journals used for the general trust account system are the cash receipts journal (incorporating receipt reversals), which is called the "trust account receipts cash book"; the cash payments journal (incorporating cheque reversals) which is called the "trust account payments cash book"; and the trust transfer journal.

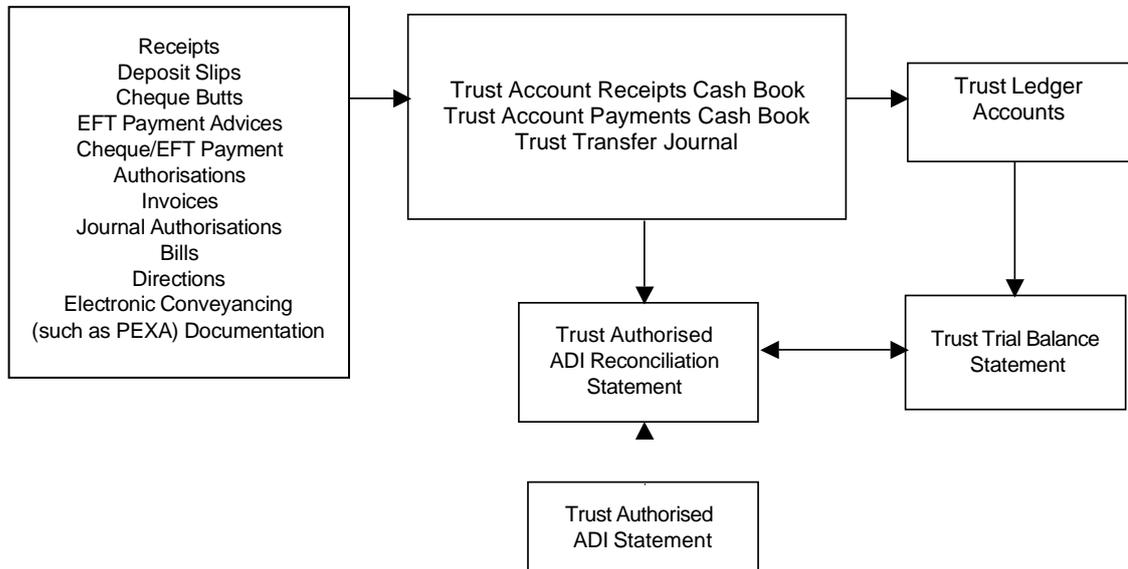
6.2.3 Book of Summary

A trust ledger account is the record in which all trust transactions relating to a particular matter are recorded in accordance with Rule 47. Its function is a book of summary. The law practice can ascertain the trust financial position of each matter by reference to each trust ledger account.

6.2.4 Reports

The trust accounting system is designed to produce a number of reports which are used to control and check the accuracy of the general trust account system. These reports include the monthly trust authorised ADI reconciliation statement (Rule 48(2)(a)) and trust trial balance statement (Rule 48(2)(b)).

The following diagram represents the basic accounting system requirements for the general trust account:



The following is a summary of each relevant Rule of the LPUGR. Where applicable, it includes a description of the accounting records to be maintained by the law practice.

6.3 Establishment of General Trust Account - Rule 35

When a law practice opens a general trust account, it must satisfy the following requirements:

- The account must be established with an authorised ADI. (See definition of “authorised ADI” and “ADI” at paragraph 2.2 of the Legal Accounting Handbook)
- The account must be maintained in New South Wales (Section 136).
- The name of the account must include the name of the law practice or the business name under which the law practice engages in legal practice, and the expression “law practice trust account” or “law practice trust a/c”. Rule 35 provides that this requirement does not apply to an account opened in New South Wales before 1 July 2015 so long as the account name did not breach any requirement of the legislation in New South Wales before that date. Pursuant to clause 60(2)(c) of the former Legal Profession Regulation 2005, this exception applied only to an account established before 1 October 2005.

The law practice must give the Law Society Council, being the designated local regulatory authority, written notice within 14 days of the establishment of a general trust account: Rule 50(1). The notice should include the name of the general trust account and the account number (including BSB). A form to be used for notification to the Law Society Council of the opening of a general trust account is available on the Law Society’s website at: <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/notification-forms>.

6.4 Closure of General Trust Account

Rule 50(3) requires the law practice to notify the Law Society Council, being the designated local regulatory authority, in writing within 14 days after the closure of the practice’s general trust account. The written notice should identify the name and account number of the closed general trust account. A form to be used

for notification to the Law Society Council of the closure of a general trust account is available on the Law Society’s website at: <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/notification-forms>.

6.5 Trust Receipts – Rule 36

6.5.1 Trust Receipts Generally

A trust receipt is the source document to record the receipt of money that is required to be deposited into a general trust account. The importance of the trust receipt cannot be overstated. It acts not only as the accounting source document but also as written confirmation of the instructions received from the person on whose behalf the money is received. The trust receipt is used to write up the trust receipts cash book and post entries to the trust ledger account.

A trust receipt must be made out for all money received as soon as practicable after the money is received, or, in the case of trust money received by direct deposit, after the law practice receives or accesses notice or confirmation of the deposit from the authorised ADI concerned. This includes any withdrawal of the statutory deposit. The original receipt must be given **on request** to the person from whom the trust money was received. If information on the trust receipt is inaccurate, then all other records produced from this document will also be inaccurate.

The LPUGR require the receipt to be made out in duplicate and:

- be consecutively numbered and issued in consecutive sequence;
- contain the name or the business name of the law practice; and
- contain the expression “Trust Account” or “Trust A/c”.

Further, the LPUGR require the receipt to contain the following particulars;

- (i) the date the receipt is made out and, if different, the date of receipt of the money;
- (ii) the number of the receipt;
- (iii) the amount of money received;
- (iv) the form in which the money was received;
- (v) the name of the person from whom the money was received;
- (vi) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
- (vii) particulars sufficient to identify the reason for which the money was received;
- (viii) the name of the person who made out the receipt.

The following is a suggested format for a trust account receipt:

PHILPOTT & ASSOCIATES TRUST ACCOUNT RECEIPT		
Receipt Number :	_____	
Date:	_____	Date Received (if different): _____
Received from;	_____	
The sum of;	_____	and _____ cents.
\$ _____	Cheque/Cash/Direct Deposit	
For and on behalf of:	_____	
Matter Reference.	Account Name	Matter Description
_____:	_____	_____
Reason:	_____	
	Made out by: _____	
	On behalf of Philpott and Associates	

The phrase “*the date the receipt is made out and, if different, the date of receipt of the money*” would apply, for example, for the receipt of money by direct deposit which is credited to the authorised ADI account on 20 April and the receipt is made out on the 26 April, which is the date that the law practice became aware of the direct deposit. Also if a principal received a cheque from a client in chambers with a barrister in the afternoon of 20 April and made the receipt out on the return to the office on 21 April then the date the money is received is 20 April and the date the receipt is made out is the 21 April. The Trust Accounts Department recommends that both dates only have to be shown if there are different dates.

The Trust Accounts Department also considers that the intention of Rule 36(2)(i), requiring the recording of the name of the person who made out the trust receipt, is that the person who made out the receipt can be identified, therefore the name of this person must be clearly printed/written on the receipt..

It is also noted that some accounting systems use a ledger reference which is different to the matter reference. In these instances both matter reference and ledger reference will need to be recorded.

It is not a requirement that the receipt disclose the field headings, although it is desirable the headings be shown to prompt the user to record the details required. Showing field headings also makes review of the receipt easier and encourages consistent entry of information.

For law practices using the Copywriter (Kalamazoo) trust accounting system, the Trust Accounts Department accepts a copy of the cash book as the duplicate receipt. This is on the basis that the records are made out simultaneously. Any law practice not using the Copywriter system as designed must therefore maintain a duplicate receipt recording the foregoing details. This also applies to law practices using a computerised accounting system. However, if the computer system allows the entry of the receipt to be changed after acceptance of the entry, then practices using this software must also maintain a duplicate trust receipt.

6.5.2 Cancelled Receipts

There will be occasions when a trust receipt is made out and it is realised prior to its issue that the content of the receipt is incorrect.

For instance, the receipt may have been made out for the general trust account when the money relates to office, or an incorrect client name may be shown. It is permissible for these receipts to be cancelled. A receipt should not be cancelled unless the original receipt has been retained. Rule 36(6) requires that the original cancelled receipt is retained by the law practice with the general trust account records.

The preferred method for cancelling a receipt is to:

- (a) note on the original and duplicate of the receipt the word “cancelled” and the reason for cancellation;
- (b) retain the original and duplicate of the receipt, the desired method being to staple the original to the duplicate;
- (c) enter the original receipt into the trust receipts cash book in receipt number sequence with the notation reading “cancelled” and reason for cancellation. An amount will not be recorded in the “amount” or “deposited” column of the trust receipts cash book;
- (d) the entry is not posted to a trust ledger account under a manual system of accounting.

The worked example in Chapter 21 illustrates the preferred method of recording a cancelled receipt.

Where it is realised that a receipt has been issued in error and the original receipt has already been issued, then the receipt should not be cancelled. The appropriate treatment for this type of error depends on the circumstances and each instance must be fully reviewed to ascertain the appropriate method of correction.

6.5.3 Multi Receipt

There will be occasions when a client attends the office and pays one amount to cover a number of matters. It is acceptable on these occasions to issue one receipt covering all matters. This is referred to as a “multi receipt”. The worked example in Chapter 21 illustrates the preferred method of recording this type of transaction.

6.5.4 Clearance for Cheques Received

A common question asked is: “How long is it before a cheque received into the general trust account can be drawn against?” The LPUGR do not stipulate a period during which a cheque must be deposited into the general trust account before funds may be drawn against it. A problem arises if a cheque received by the law practice is dishonoured when it has been drawn against prior to clearance of the funds, and trust funds belonging to other persons are used to meet that payment. This action is a breach of Section 138(1)(a) and the requirement that a law practice must hold trust funds deposited in the general trust account exclusively for the person on whose behalf it is received, and is also a breach of Section 148 and the requirement that a law practice must not cause a discrepancy in any trust account.

The law practice should be guided by advice from its authorised ADI in relation to the clearance of cheques through its specific clearance system.

It is also suggested that law practices be guided by advice from its authorised ADI in relation to the clearance of funds deposited to the general trust account by direct transfer from other financial institutions.

6.5.5 Dishonour of Cheques Received into General Trust Account

The dishonour of a cheque occurs when a cheque has been received, a receipt issued and then deposited into the general trust account but the authorised ADI subsequently advises that the cheque has not been met on presentation. This type of transaction is not a cancelled receipt and a negative receipt is not issued.

6.5.5.1 Recording Dishonoured Cheque

The method to be adopted for recording this type of transaction is to:

- (a) retain the notification of dishonour from the authorised ADI in the appropriate file;
- (b) enter the reversal in the trust receipts cash book as a negative amount, adding the reason for reversal. This has the effect of cancelling the original entry;
- (c) post the reversal entry to the debit side of the trust ledger account (the opposite side to the original receipt);
- (d) If the received funds in relation to the dishonoured cheque have been drawn against, then funds must be deposited from the office account to the general trust account immediately to rectify the deficiency. A receipt is issued for this rectification transaction and entered in the trust receipts cash book, and credited to the trust ledger account relating to the dishonoured cheque. A written notification pursuant to Section 154 is required to be sent to the Law Society Council, being the designated local regulatory authority.

The worked example in Chapter 21 illustrates the preferred method of recording a dishonoured cheque received by the law practice in the trust records. The following example illustrates the suggested method of recording such a dishonoured cheque which has been drawn against in the trust ledger account.

Philpott and Associates Trust Ledger Account					
ACCOUNT NAME		SMITH Arthur Jack			
ADDRESS		21 Belmore Rd, CANTERBURY 2180			
MATTER REFERENCE		S2			
MATTER DESCRIPTION		Estate late May Smith			
OTHER PARTY					
RESPONSIBLE LEGAL PRACTITIONER Napper			RESPONSIBLE PRINCIPAL Walsh		
Date Rct/ Rec'd/Paid <small>Note 1</small>	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amount	Credit Amount	Balance
05.09.17	R5	Commonwealth Approved ADI		15,000.00	15,000.00
04.09.17		Proceeds of bank a/c 153-607			
05.09.17	R6	A J Smith		1,000.00	16,000.00
		Proceeds of Auction of Estate Property			
05.09.17	R7	State Government Superannuation Fund Proceeds of Superannuation policy		160,000.00	176,000.00
05.09.17	R8	Max Wright - Proceeds sale of Late May Smith's MV		5,000.00	181,000.00
15.09.17	P600	St George Building Society Investment of Estate funds	170,000.00		11,000.00
16.09.17	R11	AGC Insurances Limited Proceeds of Life policy		10,000.00	21,000.00
21.09.17	P605	St George Building Society Additional investment estate funds	10,000.00		11,000.00
21.09.17	P607	A Heffron Final distribution of estate	10,000.00		1,000.00
22.09.17	R8	Max Wright Receipt cancelled - dishonoured chq	5,000.00		4,000.00DR
29.09.17	Receipts Book Ref	Philpott and Associates Adjustment of overdraft		4,000.00	0.00
01.10.17 <small>Note 2</small>	Receipts Book Ref	Max Wright Funds to replace dishonoured chq		5,000.00	5,000.00

Note 1: The column headed Date Rct/ Rec'd/Paid is used to record the date the money was received and if different the date that the receipt was made out and date of the cheque, electronic funds transfer or journal transfer.

Note 2: When this cheque is cleared Philpott & Associates may withdraw their \$4,000 deposited on 29.09.17.

Note 3: The Receipts Book Ref recorded against entries dated 29 September 2017 and 1 October 2017 would be replaced by the receipt number. However these entries are not included in the worked example at Chapter 21 and a receipt number reference has not been provided to avoid confusion.

6.6 Use of Credit Card

6.6.1 Receipts to General Trust Account

A law practice may accept a credit card payment from a person as acceptable trust funds for deposit to the general trust account. The only credit card that can be used is the type that permits the whole transaction amount to be credited. Any account keeping fees or transaction fees should be debited to the general office account.

A law practice cannot accept a direction from a person paying trust money to the law practice for the trust money to be paid by a credit card facility linked to the office account and then transferred to the general trust account. This would be a breach of Section 146 (mixing trust money with other money) and notification of this by the law practice to the Law Society Council, being the designated local regulatory

authority, would be required pursuant to Section 154.

6.6.2 Credit Card “Chargeback”

Legal practitioners should ensure when applying to operate a Credit Card Merchant Facility that the account meets the above criteria and should be aware of the credit card provider’s policy in regard to “chargeback” transactions. In the event of a “chargeback” transaction, the law practice is required to deposit the amount of the “chargeback” to the general trust account and then commence recovery proceedings against the person from whom the original funds were received.

6.7 Deposit Record – Rule 37

An authorised ADI deposit record is the source document prepared to evidence the timely deposit of receipts of general trust money to the general trust account. A deposit record must be made out and produced to the authorised ADI for each deposit to the general trust account other than direct deposits. The deposit record must be filed in the order that the deposits were made to the authorised ADI.

Although not required by the LPUGR, as a matter of internal control the authorised ADI’s deposit record should include the authorised ADI’s acknowledgment of receipt of the funds. This acknowledgment is normally in the form of the authorised ADI’s stamp and teller’s initials on the duplicate copy of the deposit slip.

The LPUGR do not require that a deposit slip is produced when funds are deposited directly to the credit of a general trust account. The law practice should review its procedures to ensure that the receipt of funds via direct deposit is acknowledged by the authorised ADI prior to the law practice drawing on the funds.

The LPUGR provide that the deposit record is made out in duplicate and must include:

- (a) the date of the deposit;
- (b) the amount of the deposit;
- (c) the cheques, notes or coins content and the amount of each;
- (d) for each cheque, the name of the drawer of the cheque, the name and branch (or BSB number) of the ADI on which the cheque is drawn, and the amount of each cheque.

The deposit slip included in the worked example in Chapter 21 records the required detail. Law practices that open a new general trust account may be provided with a “butt style” deposit slip by their authorised ADI. These deposit records cannot be used as information relating to the drawer, bank and branch is required to be provided.

The amount of the deposit and the date of the deposit slip constitute part of the details required to be entered in the trust account receipts cash book in accordance with Rule 44(2). The deposit information recorded in the receipts cash book should be reviewed on receipt of the authorised ADI statement to ensure that the amount disclosed in the receipts cash book agrees with the amount recorded on the authorised ADI statement. The worked example in Chapter 21 illustrates the Trust Accounts Department’s preferred method of recording the date and amount of the deposit in the trust receipts cash book.

6.7.1 Quick Banking

The law practice should be aware of the risks associated with the use of quick banking systems. Quick banking should only be used if the practice is satisfied that appropriate records are maintained by the law practice so as to reconstruct the deposit in the event of its being lost by the authorised ADI. Particular attention should be paid to any deposit that includes a bank (ADI) cheque. Quick banking should not be used for deposits that include cash.

If the law practice decides to adopt this system of banking, it must ensure that a copy of the deposit slip is kept as part of the trust records.

6.8 Withdrawal by Cheque or Electronic Funds Transfer - Section 144 and Rule 43

Section 144 provides that a law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer (EFT). Therefore, cash withdrawals, withdrawals or transfers from an ATM, telephone withdrawals or transfers are prohibited. The LPUGR provide for withdrawals from the general trust account by way of a cheque or electronic funds transfer.

The trust cheque butt/requisition/EFT authorisation is the source document to record payments from the trust account. The design of the cheque is usually standardised by the authorised ADI providing the service. As for receipts, the cheque butt/requisition/record of EFT is used to write up the trust payments book and post the entry to the trust ledger account.

6.8.1 Withdrawal by cheque

The LPUGR require that cheques:

- (a) contain the name of the law practice or the business name and the expression “law practice trust account” or “law practice trust a/c” (this does not apply to an account opened in NSW before 1 October 2005);
- (b) must be payable to or to the order of a specific person or persons and must not be drawn to **bearer** or cash; **and**
- (c) must be signed by an “authorised” principal of the law practice or in their absence an “**authorised person(s)**”; **and**;
- (d) must be crossed “not negotiable”.

The law practice must keep a written record of required particulars of each payment made by cheque unless the particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the cheque is issued. The written record of the required particulars must be kept in a way that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.

The written recorded must be kept in the order in which the cheques were issued and contain the following “required particulars”:

- (a) the date and number of the cheque;
- (b) the amount ordered to be paid by the cheque;
- (c) the name of the person to whom the payment is to be made or, if the cheque is made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
- (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference, or in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment; (**Account Name & Matter Reference**)
- (e) details clearly identifying the ledger account to be debited; (**Account Name & Matter Description**)
- (f) particulars sufficient to identify the reason for the payment.

The Trust Accounts Department considers that it is the intention of the LPUGR that the same information is captured in the written record as that required for receipts; in particular, Account Name, Matter Reference and Matter Description. However, the LPUGR do not use the same terms. The references above in bold italics reflect the corresponding information that is recorded for receipts.

For law practices using the computer printed cheque facility, a cheque requisition may be used prior to drawing the cheque. A sample requisition is as follows:

<u>TRUST CHEQUE PAYMENT REQUISITION</u>
Cheque Number:
Date of Payment:
Solicitor/Associate Requesting Payment:
<u>On behalf of:</u>
Client (person) Name:
Matter Description:
Matter Reference:
<u>Pay To:</u>
Payee:
Amount:
Reason/Purpose of Payment:
Authorised By (Authorised principal or associates):

Note: If the payment is made to an ADI (authorised deposit-taking institution), the name of the person receiving the benefit of the payment must also be recorded. For example, if the law practice holds a general trust account with the Commonwealth Bank and intends to draw a trust cheque payable to the Commonwealth Bank to obtain a bank cheque payable to Revenue NSW, the Payee section must record “Commonwealth Bank B/C Revenue NSW”.

6.8.2 Withdrawal by electronic funds transfer – Rule 43

The LPUGR require that electronic funds transfers are to be effected under the direction or authority of an “authorised” principal or in their absence an authorised person(s).

The law practice must keep a written record of required particulars of each payment made by electronic funds transfer unless the particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the transfer is effected. The written record of the required particulars must be kept in a way that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.

The written record for electronic funds transfer must disclose:

- (a) the date of the transfer;
- (b) the reference number or other means of identifying the transfer;
- (c) the amount ordered to be paid by electronic funds transfer;
- (d) the name and number of the account to which the amount was transferred and relevant BSB number;
- (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference, or in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment; **(Account Name & Matter Reference)**
- (f) details clearly identifying the ledger account to be debited; **(Account Name & Matter Description)**
- (g) particulars sufficient to identify the reason for the payment.

The Trust Accounts Department considers that it is the intention of the LPUGR that the same information is captured in the written record as that required for receipts; in particular, Account Name, Matter Reference and Matter Description. However the LPUGR do not use the same terms. The references above in bold italics reflect the corresponding information that is recorded for receipts.

A sample record for electronic funds transfer payment requisition is as follows:

<u>TRUST EFT PAYMENT REQUISITION</u>
EFT Reference:
Date of Payment:
Solicitor/Associate Requesting Payment:
<u>On behalf of:</u>
Client (person) Name:
Matter Description:
Matter Reference:
<u>Pay To:</u>
Account Name & Number (incl BSB):
Recipient of Funds (Name)<i>(if different)</i>:
Amount:
Reason/Purpose of Payment:
Authorised By (Authorised principal or associates):

Note: An EFT reference (internally generated) in consecutive numeric sequence should be created by the law practice and entered in the description field in the electronic funds transfer window of the internet banking facility. This reference should also be recorded in the trust payments cash book and trust ledger account, similar to the cheque number. The source record should then be filed in this EFT reference number order.

This is to ensure that the specific payment in the authorised ADI statement can be traced back to the source record and other records. The document evidencing the transfer (produced by the authorised ADI on screen) should be printed and attached to the EFT payment requisition.

6.8.3 Authorised Signatories

Rule 43(2) provides that a cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of:

- (a) an authorised principal of the law practice; or
- (b) if such principal is not available:
- (c) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
 - (iii) two or more authorised associates jointly.

Rule 50(2) requires that during July in each year, a law practice must give the Law Society Council, being the designated local regulatory authority, written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised to sign cheques drawn on a general trust account of the practice or otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice as at 1 July that year. Persons so authorised are collectively referred to as “authorised signatories” in the Legal Accounting Handbook. Notification is not required if the information has already been provided under Section 159 in Part B of the Law Practice Confirmation and Trust Money Statement which is submitted as part of the External Examiner’s Report. A form to be used for notification is available on the Law Society’s website at: <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/notification-forms>.

The signing of trust cheques and effecting of electronic funds transfers is further discussed at Chapter 7 of the Legal Accounting Handbook.

6.8.3.1 Online Payments

Law practices are being encouraged by authorised ADI’s to adopt online transaction systems in respect of general trust accounts. There is nothing to prevent practices using these systems on the understanding that practices remain responsible for the trust money, that is, the money entrusted to the law practice in the course of or in connection with the provision of legal services.

Before adopting an authorised ADI’s online transaction facilities, liability clauses should be clearly understood. A transaction is authorised by a password. The system is built on the basis that password security is controlled by an authorised principal of the law practice. If an authorised ADI receives a valid transaction (one in which the correct password has been entered), the transaction will be processed without question. If there is a lack of control over the use of security passwords, it may be impossible to identify the person who entered the transaction.

Audit trails should be reviewed to ensure that transaction details in the cash book and authorised ADI statement enable a transaction to be traced through the records. Original authorised ADI statements and the transaction confirmation document (e.g. a print out of the screen confirming the transaction) must be retained and the same controls implemented for electronic funds transfers as those adopted when signing trust cheques.

It is also suggested that before online transaction facilities are used within a law practice, the processes are documented and fully understood by all partners and staff. A management plan should also be implemented to ensure that the processes are regularly reviewed.

There is no such thing as a “forged cheque” in an online transaction. The authorised ADI will only pay on an authenticated transaction, which is one that contains correct passwords which the authorised principal/s are expected to control. It is not acceptable to entrust passwords to the bookkeeper/office manager. Authorised principals are the only persons who can authorise an online transfer unless another person is properly authorised by the law practice. The password is in effect the signature on a cheque.

The law practice must ensure that the Anti-Virus software is up to date and in accordance with the authorised ADI’s agreement for use of online banking facilities.

6.8.4 Withdrawal for legal costs

Withdrawal from general trust account to reimburse the practice’s legal costs is discussed in Chapter 3 of the Legal Accounting Handbook.

6.8.5 Cancelled trust cheques

There will be occasions when a trust cheque is made out and, before issuing the cheque, an error is realised. If the original cheque is in the possession of the law practice then it is permitted to cancel the cheque.

6.8.5.1 Procedures for cancelled trust cheques

The procedures to be followed when cancelling a trust cheque are:

- (a) the trust cheque is to be crossed “cancelled” and the signature torn from the cheque;
- (b) the trust cheque butt/requisition is to be crossed “cancelled” and the reason for cancellation recorded;
- (c) the original of the trust cheque is to be retained. The Trust Accounts Department recommends that the cancelled trust cheque be stapled to the cheque butt/requisition;
- (d) the entry is recorded in cheque number sequence in the trust payments cash book with the notation reading “Cancelled”, the reason for cancellation and a Nil dollar value recorded;
- (e) the entry is not posted to a trust ledger account under the manual accounting system.

The worked example in Chapter 21 illustrates the preferred method of recording a cancelled trust cheque.

6.8.6 Reversal of a trust cheque

There will be occasions when a trust cheque has been made out and issued to the payee and an error is subsequently realised requiring payment of the cheque to be stopped. Examples of this type of transaction are when a trust cheque is issued for an incorrect amount or the reversal of a stale cheque.

6.8.6.1 Trust cheque reversal procedure

The procedures to be followed when reversing a trust cheque are:

- (a) contact the person or entity to whom the trust cheque has been issued and advise of the problem;
- (b) contact the authorised ADI and request the issue of a stop payment order;
- (c) enter the reversal in the trust payments cash book by rewriting the entry, adding the reason for reversal and entering it as a negative amount. This has the effect of cancelling the original entry;
- (d) post the entry to the credit side of the trust ledger account (the opposite side to the original cheque);
- (e) if applicable, a replacement trust cheque should be issued in the normal manner.

The worked example in Chapter 21 illustrates the preferred method of recording the reversal of a trust cheque.

6.8.7 Multi trust cheque

There will be occasions when a trust cheque needs to be drawn to one payee which covers a number of matters. This is referred to as a “multi cheque”. The worked example in Chapter 21 illustrates the method of recording this type of transaction. Some bookkeepers/legal practitioners may find this a more convenient method of transferring costs and disbursements from the trust ledger accounts.

6.8.8 Stale trust cheques

Trust cheques which have been drawn and become stale should not be processed through the authorised ADI system. A stale cheque is one where more than 15 months has expired since it was drawn.

6.8.8.1 Procedures for dealing with stale trust cheques

It is recommended that a principal regularly review all unpresented cheques drawn on the general trust account. Unpresented cheques are listed on the monthly trust authorised ADI reconciliation statement. It is recommended that, to assist this review, the date drawn be noted against each cheque on the reconciliation statement.

Timely follow-up action should be undertaken as it is unlikely that a trust cheque that has been drawn and not presented for a period of 3 months will be presented after that time.

Where a trust cheque becomes stale, payment of it should be stopped by notifying the authorised ADI. It should also be cancelled in the trust accounting records, as detailed under the heading “trust cheque reversal procedure” at paragraph 6.8.6.1 of the Legal Accounting Handbook. Follow-up procedures should be taken to ascertain the reason for the non-presentation prior to issuing a new trust cheque.

6.9 Trust Account Cash Books – Rules 44 and 45

A law practice that maintains a general trust account must keep the following trust account cash books:

- (a) a trust account receipts cash book in accordance with Rule 44,
- (b) a trust account payments cash book in accordance with Rule 45.

For the purposes of the Legal Accounting Handbook, these cash books are referred to as “trust receipts cash book” and “trust payments cash book” respectively. Wherever the term “trust cash book” is used, it refers to both the trust receipts and payments cash books.

6.9.1 Format of Trust Cash Book

The trust cash book is used to record all trust financial transactions, that is, receipts, receipt reversals, receipt cancellations, cheques, cheque reversals, cheque cancellations and payments by electronic funds transfer. The trust cash book is designed as a summary of receipt and payment transactions, and provides control over receipt/cheque/EFT sequencing, ADI deposits (for receipts) and monthly totals of receipts and payments.

The format of the trust cash book is a matter for each law practice provided that the required information is recorded. For law practices adopting a manual accounting system, the Trust Accounts Department recommends the use of separate books or records, that is, one for receipts and one for payments.

Rule 44 requires the trust receipts cash book to record all particulars from the trust account receipt (excluding the name of the law practice, the expression “law practice trust account” and the name of the person who made out the receipt). Particulars of receipts are to be recorded in the order in which the receipts are made out and must be recorded within 5 working days of the receipt being made out.

Rule 45 requires the trust payments cash book to record all particulars from the trust cheque butt/requisition and the trust electronic funds transfer payment record. Particulars of payments are to be recorded in the order in which the payments are made and within 5 working days of the day the payment was made.

Following are suggested formats of a trust cash book that, if completed in full, will comply with the LPUGR. Bookkeepers are encouraged to enter the headings on each page of the trust cash book, to assist review by legal practitioners and external parties. The worked example in Chapter 21 uses two lines per entry. Bookkeepers/legal practitioners may use as many lines as required to record the entry.

A suggested format of the Trust Account Receipts Cash Book is:

Philpott and Associates							
Trust Account Receipts Cash Book							
For Period / / to / /						Page	
Date Rec /Rec'd <small>Note (1)</small>	Rec No. Form	Ledger r Ref <small>Note (2)</small>	Received From Reason	Account Name Matter Reference Matter Description	Multi AMT	Rec AMT	Amount Deposited
							<small>Note (3)</small>

(The Notes are listed on the next page)

Note 1: The column headed Date Rec/Rec'd is used to record the date the receipt is made out and if different the date of the receipt of the money.

Note 2: The column headed Ledger Ref is used when a law practice has a trust ledger reference that is different to the Matter Reference. The ledger reference provides the number of the ledger to which the transaction is posted.

Note 3: If the date of the last receipt is the same as the date the funds were deposited then the amount deposited is recorded against the last receipt. If the date deposited is different to the date of the last receipt then an additional line disclosing the date of the deposit and the amount of the deposit would be recorded.

A suggested format of the Trust Account Payments Cash Book is:

Philpott and Associates						
Trust Account Payments Cash Book						
For Period / / to / /					Page	
Date	Cheque/EFT Number	Ledger Ref <small>Note (1)</small>	Paid To Reason	Account Name Matter Reference Matter Description	Multi AMT	Payment AMT

Note 1: The column headed Ledger Ref is used when a law practice has a trust ledger reference that is different to the Matter Reference. The ledger reference provides the number of the ledger to which the transaction is posted.

6.9.2 Reconciliation of General Trust Account Records – Rule 48

A law practice that maintains one or more general trust accounts must reconcile the records relating to each account. Rule 48(2) requires that the records relating to the general trust account(s) are reconciled as at the end of each named month.

6.9.2.1 Trust Cash Book balance

Rule 48(2) requires the trust records in respect of a general trust account to be reconciled as at the end of each named month, and within 15 working days of each month end, by preparing statements reconciling the general trust account balance as shown in the authorised ADI records with the balance of the practice's trust cash book (**Trust authorised ADI Reconciliation Statement**) and reconciling the balance of the trust ledger accounts with the balance of the practice's trust cash book (**Trust Trial Balance Statement**).

Either the cash book is balanced and the balance carried forward to the commencement of the next month, or the balance is carried forward to a ledger account for that purpose, referred to as a "Cash Book Control Account". Either method is acceptable; however, the Trust Accounts Department recommends the use of the "Cash Book Control Account". (See Chapter 6.9.4 of the Legal Accounting Handbook)

There are several methods that can be used to produce a cash book balance to assist the practice in reconciling its trust records. The most common are the "cash book summary" or the "cash book balance". An explanation of each method follows:

(a) **"Trust Cash Book Summary"**

This method requires that, at month end, the trust receipts cash book and trust payments cash book are each totalled to obtain the total receipts and total payments for the month. The following summary is then recorded.

Trust Cash Book Summary

Opening balance	-- / -- / --	\$ _____
Plus receipts for month of	_____	\$ _____
	SUBTOTAL	\$ _____
Less payments for month of	_____	\$ _____
Closing balance	-- / -- / --	\$ _____

Note: The opening balance is the closing balance from the previous month.

(b) **“Trust Cash Book Balance”**

This method records the opening balance as the first entry of the trust receipts cash book. At month end, the trust cash book is totalled. This produces a balance which is carried forward as the opening balance for the next month.

Note: If the trust cash book is overdrawn, the balance is recorded as the first entry of the trust payments cash book.

6.9.3 Amount Deposited to Authorised ADI

Rule 44(2) requires the date and amount of each deposit in the general trust account to be recorded in the trust account receipts cash book.

This assists in preparing the reconciliation of trust records. The amount shown in the “Amount Deposited” column of the suggested Trust Account Receipts Cash Book should agree with the deposit record and the amount shown in the authorised ADI statement.

6.9.4 Posting Trust Cash Books

Individual entries recorded in a trust cash book should be posted to the individual trust ledger accounts daily. To ensure all entries are posted to the trust ledger account and to assist in the checking of the postings, it is suggested that when the detail is recorded in the trust ledger account, a tick is placed against the matter reference of the related entry in the trust cash book. The monthly totals of the trust receipts and payments cash book should be posted to the trust ledger account on a monthly basis. To ensure that these totals are posted to the trust ledger control account and to assist in the checking of the postings, it is suggested that when the details are recorded in the trust ledger control account, the trust ledger control account number be written beneath the related totals in the trust receipts or payments cash book.

The law practice must record the particulars of a receipt or payment in the trust cash book within 5 working days counting from and including the day on which the receipt was made out, the payment was made or the transfer was effected.

Rules for posting to the trust ledger are:

Receipts:

Credit Individual Trust Ledger Account with the amount of each receipt entered into the trust receipts cash book on a daily basis.

Debit Control Account with the total receipts for the month. This total is obtained by adding the column headed “Rec Amt” of the trust receipts cash book, after all transactions have been entered for the month.

Payments:

Debit Individual Trust Ledger Account with the amount of each payment entered into the trust payments cash book on a daily basis.

Credit Control Account with the total payments for the month. This total is obtained by adding the column headed "Payment Amt" of the trust payments cash book after all entries have been entered for the month.

Note: When reversing trust receipts and trust cheques the debit and credit entries to the individual trust ledgers should be recorded on the opposite side of the ledger to that where the original entry is recorded. The effect should be to cancel the original entry processed to the ledger. For further information see paragraphs 6.5.5 "Dishonour of Cheques Received into General Trust Account" and 6.8.6 "Reversal of a Trust Cheque" of the Legal Accounting Handbook.

6.10 Trust Authorised ADI Reconciliation Statement – Rule 48(2)

A trust authorised ADI reconciliation statement is the accounting record prepared to ensure that the accounting records of the law practice agree with the records produced by the authorised ADI. It is the process of comparing internal records of the law practice with external records of the authorised ADI.

It is imperative that this procedure is completed at least monthly. The longer records remain out of balance, the more difficult it is to identify and correct errors. In larger practices, trust authorised ADI reconciliation statements should be prepared weekly or daily.

Rule 48(2)(a) requires a statement to be prepared as at the end of each month reconciling the general trust account balance as shown in the authorised ADI records with the balance of the practice's trust cash book. The law practice must note the date of preparation on the reconciliation statement.

Rule 48(3) stipulates that the trust authorised ADI reconciliation statement must be prepared within **15 working days** after the end of the month concerned.

6.10.1 Procedures to complete trust authorised ADI reconciliation statements

The procedures to complete trust authorised ADI reconciliation statements are:

- (a) ensure that all receipts and payments are entered into the trust cash book prior to month end closure;
- (b) total the trust receipts cash book and trust payments cash book to determine the closing cash book balance;
- (c) obtain the month end trust authorised ADI statement balance;
- (d) compare the trust authorised ADI statement balance with the trust cash book balance:

for receipts by:

- (i) ticking credit entries that are common to the trust authorised ADI statement and trust receipts cash book;
- (ii) listing credit entries that appear in the trust authorised ADI statement but which are not recorded in the trust receipts cash book as "Credits in authorised ADI statement not in cash book";
- (iii) listing receipts recorded in the trust receipts cash book that do not appear as credits in the trust account authorised ADI statement as "Receipts in cash book not in authorised ADI statement".
These items are commonly referred to as outstanding deposits.

Entries appearing in items (d) (ii) and (d) (iii) above need to be thoroughly investigated to ascertain the reason for the discrepancy between these records and the corrective action required. Some items will need to be corrected by the authorised ADI, other items will need to be corrected by the law practice's operator, for example when an inward telegraphic transfer is credited to the trust authorised ADI account without a trust receipt having been issued by the law practice. A trust receipt may need to be issued in the following month to adjust this item.

for payments by:

- (iv) ticking debit entries that are common to the trust authorised ADI statement and the trust payments cash book;
- (v) listing debit entries that appear in the trust authorised ADI statement but which are not recorded in the trust payments cash book as “Debits in authorised ADI statement not in cash book”;
- (vi) listing entries that are recorded in the trust payment cash book but do not appear as debits in the trust authorised ADI statement as “Payments in cash book not in authorised ADI statement”. The majority of these items will be unrepresented cheques. It is suggested that this list be broken into two headings “Unrepresented cheques” and “Other payments in cash book not in authorised ADI statement”.

Entries appearing in (d) (v) and (vi), other than unrepresented cheques less than three months old, need to be thoroughly investigated as to the nature of the transaction and, if necessary, corrective action taken.

- (e) complete the trust authorised ADI reconciliation statement. This statement commences with the month-end closing balance of the trust account authorised ADI statement and then adding and/or subtracting the lists prepared in (d) above, arriving at a trust cash book balance which should agree with the balance arrived at in (b) above. For general trust accounts, the trust account authorised ADI statement balance is normally a credit balance. A sample trust authorised ADI reconciliation statement follows.

PHILPOTT AND ASSOCIATES	
TRUST AUTHORISED ADI RECONCILIATION STATEMENT	
Reconciliation statement as at	_____
Authorised ADI statement balance as at --/--/--	\$ Cr
<u>Add</u>	
Receipts in receipts cash book not in authorised ADI statement (outstanding deposits)	
Debits in authorised ADI statement not in payments cash book	
<u>Less</u>	
Cheques in payments cash book not in authorised ADI statement (unpresented cheques)	
Other entries in payments cash book not in authorised ADI statement	
Credits in authorised ADI statement not in receipts cash book	
<u>Reconciled</u> cash book balance	\$ _____
Date of preparation	By:

The reconciled cash book balance is required to be shown on the trust authorised ADI reconciliation statement (in accordance with Rule 48(2)(a)(i)).

The trust authorised ADI reconciliation statement should be reviewed by the principal(s) to ensure that:

- (a) outstanding deposits are deposited on the first working day of the next month;
- (b) items in the trust authorised ADI statement requiring adjustment by the authorised ADI, such as authorised ADI charges and authorised ADI interest, are reversed by the authorised ADI;
- (c) other items shown in the trust authorised ADI statement that have not been recorded in the trust cash book are recorded in the trust cash book on the first working day of the next month, e.g. direct deposits;
- (d) unpresented cheques are reviewed to ensure that stale cheques (older than 15 months) are reversed by the bookkeeper to the trust ledger account from which the cheque was originally drawn. The Trust Accounts Department recommends that all unpresented cheques over three months old shown on

the trust authorised ADI reconciliation statement are reviewed and the reason for non-presentation ascertained. It may be appropriate to cancel the cheque and re-issue another cheque at this time rather than wait for the cheque to become stale;

- (e) any other items shown on the previous month's trust authorised ADI reconciliation statement have been cleared.

6.102 Authorised ADI errors

Some entries occasionally appearing on trust authorised ADI statements are authorised ADI errors, e.g. costs of obtaining the cheque book, interest and incorrect deposits. Entries which are clearly authorised ADI errors should not be recorded in the trust cash book or posted to a trust ledger account. They should instead be shown as an adjusting item in the trust authorised ADI reconciliation statement, and the authorised ADI should be requested to reverse them directly from the trust authorised ADI statement. The entries should be checked to ensure that they have been reversed.

When opening a general trust account it is important to stress that the authorised ADI must charge the costs of maintaining the general trust account to the law practice's office account.

6.103 Unidentified deposits

There may be occasions when deposits are made to the general trust account but the source (the person on whose behalf the funds are received) cannot be established.

If at the expiration of the month following receipt, identification is still not possible, and all avenues of enquiry have been exhausted, the Trust Accounts Department recommends that the deposit be recorded in the trust receipts cash book and be posted to an individual trust ledger account in the name of "Unidentified deposit credited to authorised ADI statement on --/--/--". If the source of the money cannot be identified after completion of appropriate enquiries, the money should be paid to the Treasurer as unclaimed money in accordance with Section 14 of the Application Act, as contemplated by Section 167 of the LPUL.

6.11 Interest on General Trust Accounts

All interest on the money held in a general trust account is payable to the Law Society on account of the Public Purpose Fund.

Interest is not payable to the law practice on such funds. If the authorised ADI incorrectly credits interest to the general trust account, it should be shown as an adjusting item in the trust authorised ADI reconciliation statement. The authorised ADI manager should be asked to reverse the entry and credit it to the appropriate account within the authorised ADI system.

6.11.1 Statutory Deposit

Sections 46 and 47 of the Application Act and Division 1 Clauses 9 to 12 of the Regulations require that, out of the money that is held in a general trust account, the law practice must deposit and keep deposited with the Law Society an amount not less than the minimum amount calculated in accordance with Clause 10 of the Regulations. This is known as the statutory deposit. Any amount paid on statutory deposit is repayable on demand. Interest earned on the statutory deposit is paid to the Law Society on account of the Public Purpose Fund pursuant to Section 47(4) of the Application Act.

The accounting periods relating to statutory deposits are referred to as 'applicable periods' and are the 3 months periods ending on 31 March, 30 June, 30 September and 31 December of each year. Calculation of the amount to be maintained on statutory deposit with the Law Society is based on the general trust account's authorised ADI statement balance and any applicable amount held on statutory deposit. At all times, if the combined balance is less than \$10,000 then no statutory deposit is required to be maintained.

An electronic version of the statutory deposit calculator is available on the Law Society's website at: <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/statutory-deposits/calculator>

6.112 The balance of trust funds

The balance of trust funds held by law practices (represented by the trust authorised ADI statement balance) also attracts interest payable to the Public Purpose Fund. In early 1983, the Law Society reached agreement with the major financial institutions operating in New South Wales for the payment to the Law Society of interest on “the balance of trust funds” being calculated on the minimum monthly balances, not annual balances. The authorised ADIs did not agree to be bound to pay the interest, but indicated a preparedness to make “ex gratia” payments. Payments are at an agreed rate of interest (determined annually) calculated by reference to the total of the minimum monthly balance of all solicitors’ trust funds held by each authorised ADI.

6.12 Trust Trial Balance Statement – Rule 48(2)(b)

There is no reference to a trust trial balance statement in the LPUGR. However, it is the Trust Accounts Department’s view that the requirements of Rule 48(2)(b)(i) and (ii) for a law practice to prepare a statement as at the end of each month, reconciling the balance of the trust ledger accounts with the practice’s trust ledger accounts, should be construed as a “trust trial balance statement”.

A trust trial balance statement is prepared to ensure the principle of double entry accounting has been followed correctly (i.e. the system is in balance). This statement is designed to highlight any errors in the law practice’s internal records. Common errors include failure to post both sides of the transaction, posting an entry to the wrong side of the trust ledger account, incorrect calculation of the balance and transposition errors, i.e. \$15 as \$51.

Rule 48(3) requires the trust trial balance statement to be prepared **within 15 working days** after the end of the month concerned.

6.121 Preparing a trust trial balance statement

The procedures to be following when preparing a trust trial balance statement are:

- (a) ensure all transactions for the month in question have been entered in the trust cash book and posted to the relevant trust ledger accounts. This procedure is completed after reviewing the trust account authorised ADI statements;
- (b) ensure all trust journal transfer entries have been posted to the relevant trust ledger accounts;
- (c) ensure each trust ledger account has the correct resulting balance after each entry;
- (d) on a separate sheet of paper headed “Trust Trial Balance Statement”, list the balance of each individual trust ledger account. Trust ledger accounts showing a nil balance may be excluded;
- (e) add the balances of all the listed trust ledger accounts (trust trial balance);
- (f) compare the total of the trust trial balance with the reconciled trust cash book balance. For the accounting system to be in balance, the totals of the reconciled trust cash book balance, trust control account/cash book balance and the trust trial balance should all agree.

It is imperative that a law practice which maintains its trust records by a computerised accounting system, prints the trust trial balance statement before any transactions are processed for the forthcoming month.

Rule 48(2)(b)(ii) and (iii) require that the trust trial balance statement disclose the following information:

- (a) the month to which it refers;
- (b) the date of preparation;
- (c) the following details:
 - (i) name (of the person for whom the account is maintained) (**Account Name**);
 - (ii) identifying reference (**Matter Reference**);
 - (iii) a short description of the matter (**Matter Description**);
 - (iv) balance of the account (at month end);
- (d) the total of the trust ledger account balances;
- (e) a reconciliation of the balance of the trust ledger accounts with the reconciled balance of the practice’s trust cash book. The items above in bold italics and brackets reflect the descriptions that have been assigned by the Trust Accounts Department where inconsistent wording has been used in the LPUGR.

Rule 48(2)(b)(i) requires that the trust trial balance statement shows a comparison between the total of the trust ledger accounts and the balance of the trust cash book. A sample trust trial balance statement follows.

PHILPOTT AND ASSOCIATES			
TRUST TRIAL BALANCE STATEMENT			
Trust Trial Balance Statement as at: _____			
Account Name	Matter Reference	Matter Description	Balance
Total Trust Ledger Accounts			\$ _____
Rule 48(2)(b)(i) Comparison:			
Total Trust Ledger Accounts			\$ _____
Less			
Statutory deposit			\$ _____
Trial Balance Total			\$ _____
Reconciled Trust Cash Book Balance			\$ _____
Variance (should be nil)			\$ _____
Prepared by _____ Date prepared _____			

The exact comparison shown by each law practice depends on the method of presentation of the trust trial balance statement. Some presentations and the resultant Rule 48(2)(b)(i) comparisons are listed below. It is suggested that each law practice review its presentation to ensure that the reconciled trust cash book balance is compared with the total balance of the trust ledger accounts (trust trial balance) and that this comparison is shown on the trust trial balance statement. It is accepted that a number of different bookkeepers/legal practitioners and principals may be involved in compiling this comparison. However, the number of instances where records have not balanced for considerable periods has led to the Trust Accounts Department insisting that this comparison be shown on the trust trial balance statement as required by Rule 48(2)(b)(i).

Example comparisons are as follows:

<i>Where Statutory Deposit is included in trust trial balance total:</i>	
Total Trust Trial Balance (total trust ledger accounts)	\$ _____
Reconciled Trust Cash Book Balance	\$ _____
Variance (Should Be Nil)	Nil

<i>Where Statutory Deposit is excluded from trust trial balance total or is in debit column:</i>	
Total Trust Trial Balance (total trust ledger accounts)	\$ _____
Less Statutory Deposit	\$ _____
Trust Trial Balance Total	\$ _____
Reconciled Trust Cash Book Balance	\$ _____

6.13 Trust Ledger Accounts – Rule 47

The trust ledger account is the accounting record that draws together all transaction types (i.e. receipts, payments and transfer journals) relating to one matter in order to provide the history relative to that matter and the matter balance.

The double entry principle of accounting (that is, for each transaction there is an equal and corresponding debit and credit entry) is the principle upon which trust accounting is based. Simply stated, when posting to the trust ledger account for:

- (a) **Receipts** - the individual trust ledger account is credited and the trust control account/ trust cash book is debited;
- (b) **Receipt Reversals** - the individual trust ledger account is debited and the trust control account/ trust cash book is credited;
- (c) **Payments** - the individual trust ledger account is debited and the trust control account/ trust cash book is credited;
- (d) **Payment Reversals** - the individual trust ledger account is credited and the trust control account/ trust cash book is debited;
- (e) **Trust Transfer Journal** - the individual trust ledger account from which the amount is transferred is debited and the individual trust ledger account to which the amount is transferred is credited.

Note: There is no effect on the trust control account for a trust journal entry.

Rule 47(1) requires that a law practice that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each person in each matter for which trust money has been received by the practice.

Rule 47(2) requires that the following particulars must be recorded, and kept up to date, in the title of a trust ledger account:

- (a) the name of the person for and on behalf of whom the trust money was paid;
- (b) the person's address;
- (c) particulars sufficient to identify the matter in relation to which the trust money was received.

Particulars of the receipt, payment or transfer of trust money must be recorded in the trust ledger account within 5 working days of the day the receipt was made out, the payment was made or the transfer was effected.

The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

6.13.1 Particulars to be recorded in Trust Ledger Accounts

Rule 47(3) requires that the following particulars must be recorded for each transaction in the trust ledger account:

- (a) the date of the transaction;
- (b) the appropriate reference number and transaction type;
- (c) particulars sufficient to identify the reason for the transaction;
- (d) the amount of money in the transaction;
- (e) if the transaction type is:
 - (i) a receipt - the provider of the amount, and the date the amount was received if that date is different from the date of receipt;
 - (ii) a payment by cheque - the payee or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (iii) a payment by electronic funds transfer - the account name and number and the relevant BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (iv) a journal entry - the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description.

In regard to the phrase “and in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment”, the Trust Accounts Department’s interpretation of this is that the law practice is required to record the name of the authorised ADI at which the general trust account is maintained together with the name of the person to whom the authorised ADI cheque is to be paid (e.g. the payee on the bank cheque).

6.132 Format of a Trust Ledger Account

Philpott and Associates Trust Ledger Account					
Account Name:					
Address:					
Matter Reference:			Matter Description:		
Other Party:					
Responsible Legal Practitioner:			Responsible Principal:		
Date Rec/ Rec'd/Paid <small>(Note 1)</small>	Reference Number	Rec'd From/Paid To/Jnl To/From. Reason	Debit Amount	Credit Amount	Balance

Note 1: The column headed Date Rec/Rec'd/Paid is used to record the date the receipt is made out, and if different the date the money was received. If the transaction is by trust cheque, trust electronic funds transfer or trust transfer journal, the date recorded is the date the cheque is drawn, the electronic funds transfer is made, or the journal transfer is effected.

The method of maintaining the trust ledger account may take any form chosen by the law practice. The methods available include card, book or computer formats.

The method of maintaining the ledger may take any form chosen by the law practice. Methods available include card, book or computer format.

6.13.3 Trust Ledger Account in name of Law Practice or Legal Practitioner Associate

Rule 49(2) permits a law practice to have a trust ledger account in the name of the law practice or a legal practitioner associate in the following circumstances:

- (a) a trust ledger account in the law practice's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs. The money in the trust ledger account must be withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account: Rule 49(3); and
- (b) a trust ledger account in a legal practitioner associate's name, but only in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity. The law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates: Rule 49(4).

A legal practitioner should not maintain a trust ledger account in her or his own name if it is not in respect of a legal matter. Moreover, the operation of Section 146 dictates that the law practice is not allowed to mix trust money with other money unless authorised by the Law Society Council, being the designated local regulatory authority, and in accordance with any conditions imposed by that Council in relation to the authorisation.

6.14 Trust Transfer Journal – Rule 46

The trust transfer journal is the accounting record used to record all “non cash” trust transactions, that is, transactions that do not involve receipts by cash/cheque/electronic funds transfer/direct deposit, or payments by cheque/electronic funds transfer. Examples of “non cash” transactions are:

- (a) Transfer of money from one trust ledger account to another trust ledger account - commonly used to record the transfer of trust money from a sale matter to a purchase matter, and the transfer of the proceeds of a sale of property of a deceased estate from the sale matter to the deceased estate matter;
- (b) Correction of incorrect posting, for example, where a trust receipt is posted to an incorrect trust ledger account, the error is realised, and a correcting journal entry is made;
- (c) Transfer from an individual trust ledger account to a trust ledger account for the aggregation of legal costs as prescribed by Rule 49(2)(a).

The LPUGR permits the journal transfer only if the law practice is entitled to withdraw the money and pay it to the other trust ledger account. The journal transfer must also be authorised in writing by an authorised principal of the law practice, or, if such a principal is not available, an authorised legal practitioner associate of the law practice (e.g. employed legal practitioner), or an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money, or two or more authorised associates jointly, or an external intervener for the law practice. The law practice must retain particulars of each authorisation. For law practices using a manual accounting system, the handwritten journal entry should be authorised in writing (e.g. the principal signs beside each entry) before it is posted to the respective trust ledger accounts.

The Trust Accounts Department recommends that law practices adopting a computerised trust accounting system use a trust journal transfer request form as the source record for all trust journal transfers. This document should be signed by the authorised person(s) and detail the reason for the transfer.

A sample trust journal authorisation form follows:

<u>TRUST JOURNAL TRANSFER REQUEST</u>	
Trust Journal Reference Number:	
Date:	
Solicitor/Associate Requesting Transfer:	
<u>Transfer From:</u>	
Client (person) Name:	
Matter Description:	
Matter Number:	
Amount:	
<u>Transfer To:</u>	
Client (person) Name:	
Matter Description:	
Matter Number:	
Amount:	
Reason/Purpose of Transfer:	
Authorised By (Authorised principal or associates):	

It is suggested that the printed trust transfer journal should also be reviewed and endorsed by an authorised person(s) initialling each entry.

6.14.1 Particulars to be included in a Trust Transfer Journal

Rule 46(3) requires the trust transfer journal entry to record the following particulars in respect of each transfer of trust money by journal entry:

- (a) date of the transfer;
- (b) the trust ledger account from which the money is transferred (including the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description);
- (c) the trust ledger account to which the money is transferred (including the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description);
- (d) the amount transferred;
- (e) particulars identifying the reason for the transfer.

Rule 46(4) requires journal pages or entries must be consecutively numbered. The Trust Accounts Department recommends that each entry in the trust transfer journal be consecutively numbered.

A sample trust transfer journal record follows:

Philpott and Associates Trust Transfer Journal					
For Period / / to / /					Page
Date	Journal Reference	Matter Reference, Account Name Matter Description Reason	Debit	Credit	Authorised by

Recording a reason for a trust transfer journal entry is a matter commonly overlooked by bookkeepers/ legal practitioners. As a cheque cannot be paid from the trust ledger account unless the payment has been authorised by the person on whose behalf the money is held and signed by an authorised person(s), likewise a trust journal transfer entry should not be completed unless the transfer has been approved by the person on whose behalf the money is held and the transfer is authorised in writing by an authorised person(s).

Prior to effecting a trust journal transfer, the trust ledger accounts should be reviewed to confirm which accounts the money is being transferred to and from and that there are sufficient funds in the latter ledger account to make the transfer.

The procedure for posting a trust transfer journal is:

- Debit** The trust ledger account that the funds are being transferred from.
- Credit** The trust ledger account that the funds are being transferred to.

7. AUTHORISED SIGNATORIES

7.1 Authority to Operate General Trust Accounts or Controlled Money Accounts

Rule 43 provides, in respect of a withdrawal of trust money from a general trust account, a cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of:

- (a) an authorised principal of the law practice; or
- (b) if such a principal is not available:
 - (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australia legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
 - (iii) two or more authorised associates jointly.

Rule 63 provides that withdrawals from a controlled money account must be effected only by cheque or electronic funds transfer, and under the direction of or with the authority of:

- (a) an authorised principal of the law practice; or
- (b) if such a principal is not available:
 - (i) a legal practitioner associate authorised by the law practice to effect, direct or give authority for this purpose, or
 - (ii) when an authorised practitioner referred to in (i) is not available—an Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money and who is authorised by the law practice to effect, direct or give authority for this purpose, or
 - (iii) when the authorised practitioners referred to in (i) or (ii) are both not available—two or more associates of the law practice jointly who are authorised by the law practice to effect, direct or give authority for this purpose.

An **“associate”** is defined in Section 6 to mean a person who is one or more of the following:

- (a) a principal of the law practice;
- (b) a partner, director, officer, employee or agent of the law practice;
- (c) an Australian legal practitioner who is a consultant to the law practice.

A **“legal practitioner associate”** is also defined in Section 6 to mean an associate of the law practice who is an Australian legal practitioner.

The term **“authorised”** is not defined in the LPUL or LPUGR. Under the previous legislative regime, the Legal Profession Regulation 2005 defined “authorised” to mean:

- in the case of withdrawals from the general trust account by cheque: authorised by the law practice to sign cheques;
- in the case of withdrawals from the general trust account by electronic funds transfer: authorised by the law practice to effect, direct or give authority for an electronic funds transfer;
- in the case of withdrawals from the controlled money account: authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

Further, for the purposes of being “authorised” to operate a general trust account or a controlled money account, a person is “authorised” when the law practice delegates the person the authority to sign cheques (i.e. a signatory on the general trust account or controlled money account) or effect electronic funds transfers (i.e. is given access to internet banking).

7.2 Notification Requirements Regarding Authorised Signatories

Rule 50(2) requires that during July in each year, a law practice must give the Law Society Council, being the designated local regulatory authority, written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised to sign cheques drawn on a general trust account of the practice or otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice as at 1 July that year. Persons so authorised are collectively referred to as “authorised signatories” in the Legal Accounting Handbook. Notification is not required if the information has already been provided under Section 159 in Part B of the Law Practice Confirmation and Trust Money Statement which is submitted as part of the External Examiner’s Report.

The term “associate” includes the principal of the law practice. As such, a principal of the law practice who is an authorised signatory must be included on the list.

It is the view of the Trust Accounts Department that provided a law practice has a principal with a practising certificate authorising the receipt of trust money then the solicitor associates and non-solicitor associates may receive trust money on behalf of the law practice and account to the law practice for the trust money.

No notification to the Law Society Council, being the designated local regulatory authority, is required regarding persons authorised to operate a controlled money account.

The law practice is not required to seek permission from the Law Society Council, being the designated local regulatory authority, to authorise persons to sign a trust cheque or effect an electronic funds transfer for the general trust account or controlled money accounts.

A law practice is also no longer required to notify the Law Society Council upon the appointment or termination of an authorised signatory for the general trust account.

A notification form pursuant to Rule 50(2) in the event that the notification has not been included as part of the External Examiner’s Report is available on the Law Society’s website at: <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/notification-forms>

7.3 Procedures for Notifying the Law Society Council of Authorised Signatories

Following is the recommended procedure to be followed when notifying the Law Society Council, being the designated local regulatory authority, of authorised signatories on the general trust account:

- (a) Ensure that all authorised signatories are up to date in Part B of the Law Practice Confirmation and Trust Money Statement which forms part of the External Examiner’s Report and that this report is submitted by 31 May each year;
- (b) If there are any changes in the list of authorised signatories from the date of submission of the External Examiner’s Report to 1 July that year, download and complete the notification form pursuant to Rule 50(2);
- (c) If the list of authorised signatories is not provided in the External Examiner’s Report, download and complete the notification form pursuant to Rule 50(2).

8. WRITTEN DIRECTION MONEY - SECTION 137(a)

8.1 Written directions generally

If at the time a law practice receives trust money (other than cash) it also receives a written direction by a person legally entitled to provide it to deal with the money otherwise than by depositing it into the general trust account, the law practice is obliged to follow the person's instructions.

“Written direction money” is defined in Rule 34 to mean trust money that is received or held by a law practice, in respect of which the law practice has a written direction to deal with the money otherwise than by depositing it in a general trust account, and that is not controlled money.

8.2 Person legally entitled to provide written direction

The phrase “person legally entitled to provide written direction” is not defined in the LPUL. However the operation of Section 137(a) provides for a person, other than the person on whose behalf trust money is received, to give binding written directions to a law practice with regard to trust money providing that person is “legally entitled” to do so.

8.2.1 Example of Written Direction Money

An example is where a cheque is received by the law practice which is made payable to the law practice whereby the person entitled provides a written direction to the law practice to deposit the money into the entitled person's bank account rather than the law practice's general trust account. The written direction cannot be to deposit it to the law practice's office/general account or an account in which other money is held by the law practice as Section 146 precludes a law practice from mixing trust money with other money.

8.2.2 Examples of possible “legally entitled” persons

An example could be where a court gives written orders as to the way a person's trust money is to be handled. For example, a spouse with a Family Court Order; a Trustee in Bankruptcy with a Sequestration Order or a Guardian with a Guardianship Order. Another example may be where a law practice is sent a statutory notice from a government department such as the Australian Taxation Office or Child Support Agency and the notice establishes that the department or agency has a “legal entitlement” to particular trust money not yet deposited into the general trust account or controlled money account.

8.2.3 Law Practice must ensure person is “legally entitled”

A law practice faced with this particular situation must ensure that the person providing the direction to a law practice with regard to trust money is “legally entitled” to do so. Additionally, the law practice should ensure that the person's claim to “legal entitlement” is in respect of the **specific** trust monies concerned. That is, that the trust money is not protected from a claim of legal entitlement, such as, protected money or assets listed in the *Bankruptcy Act 1966* (Cth).

8.3 Record Keeping Requirements

The practice must keep the written direction as part of its trust records for a period of seven years after finalisation of the matter to which the direction relates. A folder containing all original written directions provided to the law practice should be kept and a copy placed in the respective file.

8.4 Written Direction Money received in cash

Money received in the form of cash must be deposited in the general trust account before dealing with it in accordance with the person's written direction. A trust receipt should be issued and the money disbursed according to the direction.

8.5 Trust Account Statement

The LPUGR do not require a trust account statement to be issued for trust money received that is subject to a written direction.

9. CONTROLLED MONEY – RULES 61 TO 64

Section 128 defines a “controlled money account” as “an account maintained by a law practice with an ADI for the holding of controlled money received by the law practice”.

Unlike a general trust account, it is not necessary for a controlled money account to be maintained with an authorised ADI. However, it must be maintained with an “ADI”. ADI is defined under Section 6 as “an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth”. A list of ADI’s can be located on the Australian Prudential Regulation Authority (APRA)’s website: www.apra.gov.au

Section 128 defines “controlled money” as “money received or held by a law practice in respect of which the law practice has a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control”.

9.1 Elements of Controlled Money:

- money **received** or held by the law practice;
- in respect of which the practice has a **written direction** to deposit the money in an account (other than a general trust account) over which the practice has or will have **exclusive control**;
- in respect of which the practice has a written direction to disburse (other than for legal costs, court order or as authorised by law) the money.

9.1.1 Written direction in respect of controlled money

The LPUL requires a law practice to obtain a written direction from the person on whose behalf the money was received (e.g. the client) before the money can be deposited to a controlled money account. The written direction by the client should be specific to avoid possible breaches of the Corporations Act as law practices are prohibited to give financial advice to a client (except where the law practice has a Australian Financial Services Licence). It may be prudent for the written direction to have the details of the matter, reason for the investment, name of the ADI and the type of account (e.g. type of product that an ADI offer) inserted in the direction given to the law practice. The law practice should refrain from giving the client advice about investing with a specific ADI and/or type of ADI account.

As soon as practicable after receiving controlled money, a law practice must deposit the money in the account specified in the written direction relating to the money. As Section 139(6) provides that the controlled money account must be held exclusively for the person on whose behalf it is received, the law practice must ensure that it does not “pool” controlled money received on behalf of a person with controlled money received on behalf of another person.

9.1.2 No written direction

In the absence of a written direction, the following avenues would apply:

- (a) If a cheque is made payable to the law practice – the money must be deposited into the practice’s general trust account pending written instructions from the person;
- (b) If a cheque is made payable to the client (or the person on whose behalf the money is received) – the cheque must be delivered to the client/person or returned to the drawer of the cheque as the money is considered to be transit money;
- (c) If cash is given to the law practice – the money must be deposited into the practice’s general trust account pending written instructions from the client.

9.2 Establishment of a Controlled Money Account

A law practice must establish a controlled money account with an ADI as specified in the written direction as soon as practicable after receiving controlled money. However, the practice may after receiving a written direction to do so, open a controlled money account in anticipation of receiving controlled money.

According to Rule 61 the controlled money account must be maintained under an account name that includes the following particulars:

- (a) the name of the law practice; and
- (b) the expression “controlled money account”, “CMA” or “CMA/c”; and
- (c) particulars that are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.

It is also suggested that “TTF” be recorded in the account name to remove the requirement on the law practice to submit a trustee return as per a tax ruling.

The distribution of the interest on the controlled money account should be documented in the initial written direction to open the controlled money account especially if the money is held for two or more parties.

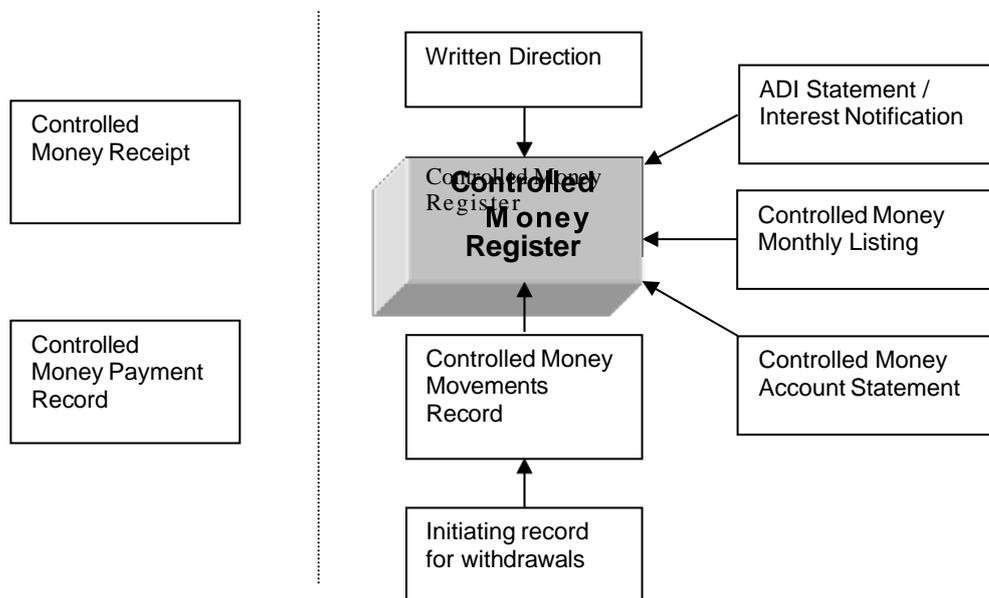
The tax file numbers of the persons on whose behalf the controlled money account is opened should be provided to the ADI when opening the account as this removes the requirement of the ADI to withhold interest. It is strongly suggested that the law practice does not provide the law practice’s tax file number when opening the account as the ADI will then record the interest as having been credited to the law practice.

9.3 Record Keeping Requirements

The law practice must maintain the controlled money account and keep accounting records for controlled money in accordance with Rules 61 to 64.

The following diagram illustrates the records required to be kept in respect of controlled money.

Controlled Money Records:



The duplicates of the controlled money receipts should be retained in sequence in the controlled money receipt book.

The records that are required to be maintained in the “controlled money register” are:

- Written direction
- Cheque/payment records
- Controlled money movement record (ledger)
- Controlled money monthly listing
- ADI statements / Passbook
- Controlled money account statement (trust account statement)
- Any supporting information relating to controlled money

The following is a summary of each controlled money record and the requirements of the LPUGR relating to that record.

9.4 Written Direction – Section 139

As soon as practicable after receiving controlled money, a law practice must deposit the money into an ADI account specified in the written direction relating to the money. The written direction is the primary source document for controlled money. It is a record of the person’s instructions and directs the law practice to deposit the money in a nominated account and disburse the money.

Section 139(5) stipulates that the law practice must keep a written direction for a period of seven years. The written direction should be kept in the controlled money register and a copy kept in the relevant matter file.

9.5 Controlled Money Receipt – Rule 62

The law practice must make out a controlled money receipt as soon as possible after receiving the controlled money. If the law practice receives the money by direct deposit, then the practice must make out a receipt after receiving notice or confirmation of the deposit from the ADI. In other words, if a person makes a direct deposit into a controlled money account, the law practice is required to make out a receipt upon receiving confirmation that the money has been credited into the account. The law practice may also become aware of these deposits by accessing the internet or receiving an ADI statement from the ADI.

The controlled money receipt is to be made out to the person from whom the controlled money is received and given to the person on request.

There are instances where the money is held in the general trust account but later directed by the person to deposit the money in a controlled money account. A controlled money receipt is required to be made out to the general trust account.

The law practice must operate a single controlled money receipt system for the receipt of controlled money for all controlled money accounts. For example, if a law practice has several branches it will still be required to have one set of controlled money receipts.

The controlled money receipts must be made out in duplicate, unless at the time the receipt is made out those particulars are recorded by a computerised accounting system in the register of controlled money, and must include the name of the law practice or business name, include the expression “controlled money receipt”, be consecutively numbered, and issued in consecutive sequence, and also contain the following particulars::

- (a) the date the receipt is made out and, if different, the date of receipt of the money;
- (b) the amount of money received;
- (c) the form in which the money was received;
- (d) the name of the person from whom the money was received;
- (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;

- (f) particulars sufficient to identify the reason for which the money was received;
- (g) the name of, and other details clearly identifying, the controlled money account to be credited, unless the account has not been established by the time the receipt is made out (e.g. the ADI account name and number including BSB);
- (h) the name of the person who made out the receipt.

A sample controlled money receipt follows:

PHILPOTT & ASSOCIATES CONTROLLED MONEY RECEIPT	
Receipt Number: _____	
Date: _____	Date of Receipt: _____ <small>(If Different to the date receipt was made out)</small>
Received from: _____	
The sum of : _____ and _____ cents	
\$ _____ Cash/Cheque/Direct Deposit	
For and on behalf of: _____	
Account Name: _____	
Matter Reference: _____	Matter Description: _____
Reason: _____	
Name of controlled money account to be credited: _____	
Account Number (including BSB): _____	
Name of Person Issuing Receipt: _____	

If the controlled money account was not established when the receipt was issued, particulars of the account must be included in the duplicate receipt.

A controlled money receipt is not required to be made out for interest or other income received from the investment of controlled money which is credited directly to the controlled money account.

9.6 Payment of Controlled Money – Rules 63 & 42

Controlled money must not be disbursed except:

- (a) in accordance with the original written direction applying to the receipt of the money or a later written direction given by the person on whose behalf the money was received; or
- (b) as prescribed at Rule 42 relating to the withdrawal for legal costs; or
- (c) in accordance with a court order or as authorised by law.

Despite any direction to the contrary, controlled money can only be withdrawn from the controlled money account by:

- (a) cheque,
- (b) electronic funds transfer.

The following withdrawals are prohibited:

- (a) Cash withdrawals;
- (b) ATM withdrawals or transfers; and
- (c) Telephone banking, withdrawals or transfers.

A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of:

- (a) an authorised principal of the law practice; or
- (b) if such a principal is not available:
 - (i) a legal practitioner associate authorised by the law practice to effect, direct or give authority for this purpose, or
 - (ii) when an authorised practitioner referred to in (i) is not available—an Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money and who is authorised by the law practice to effect, direct or give authority for this purpose, or
 - (iii) when the authorised practitioners referred to in (i) or (ii) are both not available—two or more associates of the law practice jointly who are authorised by the law practice to effect, direct or give authority for this purpose.

See Chapter 7 for more information relating to authorised signatories.

9.6.1 Particulars to be recorded for withdrawal

A written record of the required particulars must be kept for each withdrawal of controlled money. The written record must be kept in the order in which the withdrawals are made and are to be recorded separately for each controlled money account.

If at the time the withdrawal is made, the required particulars are recorded by a computerised accounting system, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.

The written record must contain the following particulars:

- (a) the date and number of the transaction;
- (b) the amount withdrawn;
- (c) if the withdrawal was made by:
 - (i) cheque, the name of the payee;
 - (ii) electronic funds transfer, the name and the account number (including the BSB number) to which the amount was transferred;
 - (iii) by cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
- (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

- (e) particulars sufficient to identify the reason for which the payment was made;
- (f) the person or persons effecting, directing or authorising the withdrawal.

A sample controlled money payment record follows:

9.62 Withdrawal of legal costs from Controlled Money Account

<u>CONTROLLED MONEY PAYMENT RECORD REQUEST</u>	
Reference Number:	
Controlled Money Account Number:	
Date:	
Matter Reference:	
Client/Person's Name:	
Matter Description:	
Amount:	
Payee:	
If payable to ADI – Name of ADI:	
BSB:	
Name of beneficiary:	
Reason/Purpose of Payment:	
Clients written instructions for the payment are attached :	Y/N
Solicitor/Associate Requesting Payment:	
Authorised By: (Authorised controlled money account signatory/ies):	

Withdrawal of legal costs from a controlled money account is discussed at Chapter 3 of the Legal Accounting Handbook.

9.7 Controlled Money Register – Rule 64

The law practice must maintain a register of controlled money for the records of controlled money movements for all its controlled money accounts together with all supporting documentation including ADI statements and notifications of interest received. A separate record of movements must be maintained for each controlled money account.

9.7.1 Record of Controlled Money Movements

The Trusts Accounts Department suggests that the record of controlled money movements for a controlled money account be kept in a form of a ledger.

The record of controlled money movements must disclose:

- (a) the name of the person on whose behalf the controlled money is held;
- (b) the person's address;
- (c) particulars sufficient to identify the matter (e.g. matter reference and matter description);
- (d) any changes to the information above.

Particulars to be recorded in Record of Controlled Money Movements for receipt of controlled money

For the receipt of controlled money, the following particulars must be recorded in the record of controlled money movements:

- (a) date the controlled money was received;
- (b) number of the receipt;
- (c) date the money was deposited in the controlled money account;
- (d) name of and other details clearly identifying the controlled money account;
- (e) amount of controlled money deposited;
- (f) details of the deposit sufficient to identify the deposit;
- (g) interest received.

Particulars to be recorded in a Record of Controlled Money Movements for withdrawal of controlled money

For the withdrawal of controlled money, the particulars that must be recorded in a record of controlled money movements are those prescribed in Rule 63(5), being:

- (a) date and number of the transaction;
- (b) amount withdrawn;
- (c) if the withdrawal was by;
 - (i) electronic funds transfer – the name and account number to which the amount was transferred and the relevant BSB number;
 - (ii) cheque – the name of the payee;
 - (iii) cheque made payable to an ADI – the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
- (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
- (e) particulars sufficient to identify the reason for which the payment was made;
- (f) name of the authorised person(s) effecting the withdrawal.

A suggested presentation of the controlled money movements record is:

PHILPOTT & ASSOCIATES						
Controlled Money Movements Record						
Person's Name: _____						
Person's Address: _____						
Matter Reference: _____ Matter Description: _____						
ADI: _____						
Address: _____						
Original Investment Amount:\$ _____ Date: _____						
Account Name: _____						
Account Number: _____						
Term/Duration: _____						
Interest Rate: _____						
Payable from: _____						
Payable: _____						
Date Rec/ Rec'd/ Paid <small>Note 1</small>	Rec./Cheq/ EFT No	Paid To/Rec'd From Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Party Authorising Withdrawal

Note 1: The column headed Date Rec/Rec'd/Paid is used to record:

- (a) for a receipt of controlled money, the date the receipt is made out and, if different, the date the money was received;
- (b) for a withdrawal of controlled money by cheque, the date the cheque is drawn; or
- (c) for a withdrawal of controlled money by electronic funds transfer, the date the transfer is effected.

The LPUGR stipulate that particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or the payment is made.

The LPUGR take into account that the receipt of interest and other income may only come to the law practice's attention when it receives an ADI statement. Consequently, particulars of interest and other income received in respect of controlled money are required to be entered in the register as soon as practicable after the law practice is notified of the receipt.

9.8 Controlled Money Listing – Rule 64(8)

The law practice is required to prepare and keep in permanent form a statement listing its controlled money accounts as at the end of each month, detailing:

- (a) the name, number and balance of each controlled money account in the controlled money register; and
- (b) the name of the person on whose behalf the controlled money in each account was held; and
- (c) a short description of the matter to which each account relates; and
- (d) the date the statement was prepared.

The law practice must prepare the statement within 15 working days after each named month.

Rule 64(9) now requires the controlled money statement to be reviewed by a principal of the law practice who is authorised to receive trust money and that review must be evidenced on the statement.

A suggested presentation of the controlled money listing is:

PHILPOTT & ASSOCIATES Controlled Money Listing As at 30 September 20XX				
Persons Name	Account Name	Account Number ADI Name	Matter Reference Matter Description	Amount
			Total	

Prepared on: 15 October 20XX
Prepared by:
Reviewed by: _____
Name of Principal
Signature _____ Date _____

9.9 Trust Account Statement – Rules 52 & 53

Trust account statements for controlled money must be given to persons on whose behalf the money is held. The requirements in regard to the provision of trust account statements are discussed at Chapter 5 of the Legal Accounting Handbook.

10. TRANSIT MONEY – SECTION 140

10.1 Transit Money Generally

Section 128 defines transit money as money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the law practice.

Section 140 requires the law practice to pay or deliver the money as required by the instructions relating to the money within the period (if any) specified in the instructions, or else as soon as practicable after it is received.

10.2 Record Keeping Requirements

In respect of transit money received by the law practice, Section 140(2) requires the practice to record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

Where third party cheques are received, a law practice should ensure where possible, that copies of the cheques are retained. Copies of other documentation received should also be retained. For example, settlement directions from the vendor and directions from an incoming mortgagee or directions to an agent. Together, these kinds of records will assist a law practice to discharge its obligation in respect of Section 140(2) “to record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received”. Transit money records should be kept in the client file.

10.2.1 Retention of Records

The brief particulars required to be retained in respect of transit money, such as, written directions, authorities or other documents, come within the definition of *trust records* in Section 128. In accordance with Section 140(3) these trust records are to be kept for a period of 7 years.

10.3 Transit Money received in cash

The law practice must deposit transit money received in cash into the general trust account as soon as practicable after receiving the money before dealing with it in accordance with the instructions: Section 143. A trust receipt should be issued and the money then dealt with according to the instructions as soon as practicable.

10.4 Trust Account Statements

A trust account statement does not have to be issued for transit money.

11. MONEY TO BE DEALT WITH UNDER A POWER – RULE 55

11.1 Power or Authority

If the law practice or an associate of the practice is given a power or authority to deal with money for or on behalf of a person (for example, power of attorney, grant of probate, guardianship order, or an authority to sign on a person's bank account, whether alone or jointly), the practice is required to keep records in accordance with Rules 55 and 60.

11.2 Record Keeping Requirements

The law practice must keep:

- (a) a record of all dealings with the money to which the practice or associate is a party, **and**
- (b) all supporting information in relation to the dealings;

in a manner that enables the dealings to be clearly understood.

11.2.1 Recording all dealings

The suggested method of recording all dealings, in respect of a power to deal with money for or on behalf of a person, is to record all dealings in a ledger style document.

The law practice must keep the record, supporting information and power or authority as part of its trust records. In other words, the practice should retain all bank (ADI) statements, information supporting the deposit of trust money or any withdrawal of trust money (including the name of the payee and supporting invoices/receipts in relation to the payment) and cheque books or electronic funds transfer advices (if any) for a period of seven years: Section 147(2)(d).

In situations where two law practices are joint signatories of a bank (ADI) account and that there is only one bank (ADI) statement, the law practices can by agreement, allocate the task of record keeping to one law practice and ensure that the other law practice is provided with a copy of the records at least monthly.

11.3 Register of Powers and Estates in relation to Trust Money – Rule 60

A law practice must maintain a register of powers and estates in respect of which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or one or more associates of the practice, in relation to trust money.

This does not apply where the law practice or an associate of the law practice is also required to act jointly with one or more persons who are not associates of the law practice: Rule 60(2).

11.3.1 The register of powers and estates must record:

- (a) particulars sufficient to identify each power in respect of which the law practice or an associate of the law practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice), including the name and address of the donor and date of each power;
- (b) particulars sufficient to identify each estate in respect of which the law practice or an associate of the law practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice), including the name and date of death of the deceased in respect of each estate of which the law practice or associate is executor or administrator.

A suggested format of the Register of Powers and Estates is:

Philpott and Associates Register of Powers and Estates					
Date of Power	Name and Address of Donor / Deceased	Matter Reference	Description of Power	Date of Death of Deceased	Responsible Solicitor

11.32 Powers and estates that must be included in the Register

The register of powers and estates must record all powers and estates where the law practice or an associate of the practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice) in relation to trust money (but not where the law practice or associate is also acting or entitled to act with one or more persons who are not associates of the law practice).

If a legal practitioner associate is given a sole general power of attorney from a client, an entry must be made in the register regardless of whether the legal practitioner associate becomes a signatory of the client’s personal bank account.

In essence, a system of ensuring that details of all such powers and estates are recorded in the register must be developed by the law practice.

11.4 Money under a Power received in cash

The law practice **must** deposit trust money subject of a power that is received in the form of cash in a general trust account (or a controlled money account in the case of controlled money) of the law practice concerned as soon as practicable after receiving the money before it is otherwise dealt with in accordance with the power, despite anything to the contrary in the power or any relevant direction.

11.5 Costs

Costs cannot be withdrawn from the power money account pursuant to Rule 42. Costs can only be withdrawn pursuant to the power.

11.6 Trust Account Statement

Rules 52 and 53 prescribe that trust account statements must be sent to each person for whom or on whose behalf trust money (other than transit money and written direction money) is held or controlled by the law practice or an associate of the practice. This includes trust money subject of a power. See details at Chapter 5 of the Legal Accounting Handbook.

12. INVESTMENT OF TRUST MONEY

12.1 When Investment Money is not Trust Money

Section 129(2)(b) provides that the following money is not trust money:

- (a) money entrusted to or held by a law practice for or in connection with a managed investment scheme or mortgage financing undertaken by the law practice;
- (b) money received by a law practice for or in connection with a financial service it provides in circumstances where the law practice or an associate of the law practice is required to hold an Australian financial services licence covering the provision of the service or provides the financial service as a representative of another person who carries on a financial services business;
- (c) money received by a law practice for investment purposes.

“Australian financial services licence”, “authorised representative”, “financial service” and “financial services business” are not defined in the LPUL or LPUGR. The Trust Accounts Department is of the view that these terms have the same meanings as in Chapter 7 of the Corporations Act 2001 (Cth).

12.1.1 Disclosure to Clients— When Investment Money is not Trust Money - Section 134

When a law practice receives or holds money that is non-trust money (other than money for the payment of legal costs due to the law practice), it must give the person who provided the money written notice. The notification requirements are discussed at Chapter 2 of the Legal Accounting Handbook.

12.2 When Investment of Trust Money is Trust Money

Section 129(2)(d) provides that money that is received by a law practice for investment purposes is trust money if both of the following criteria are satisfied;

- the law practice received the money in the ordinary course of legal practice and primarily in connection with the provision of legal services at the direction of the client, **and**
- the **investment** is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the money or property.

The Trust Accounts Department suggests that any law practice investing money that has been entrusted to the law practice obtains a written direction from the person on whose behalf the money is held, unless acting under a power. The written direction provides evidence that the law practice is not making investment decisions on behalf of a person on whose behalf money is held which may be in breach of the Managed Investments Act, 1998 (Cth) and/or Corporations Act, 2001 (Cth).

12.2.1 An Example of When Investment of Trust Money is Trust Money

A law practice is entrusted with settlement moneys, say from the proceeds of the sale of a property. This trust money is then receipted through the trust records of the law practice to the general trust account or a controlled money account. The law practice is subsequently given further instructions to invest the trust money in a non ADI or to buy shares or other property on behalf of the client.

12.3 Register of Investments

If a law practice invests trust money for or on behalf of a client, the law practice must maintain a register of investments of trust money: Rule 59. The law practice should record an investment made by the practice in the register if the practice has or will have continuing control over the investment.

12.3.1 Register of Investments – Information Required – Rule 59

Rule 59 requires a register to be kept for the investment of trust money.

The register must record the following information in relation to each investment:

- (a) the name in which the investment is held;
- (b) the name of the person on whose behalf the investment is made;
- (c) the person's address;
- (d) particulars sufficient to identify the investment;
- (e) the amount invested;
- (f) the date the investment was made;
- (g) particulars sufficient to identify the source of the investment,
- (h) details of any documents evidencing the investment;
- (i) details of any interest received from the investment or credited directly to the investment;
- (j) details of the repayment of the investment and any interest, on maturity or otherwise.

In regard to item (g) above, the Trust Accounts Department suggests that particulars sufficient to identify the source of the investment would include:

- (a) a reference to the relevant trust ledger, and
- (b) a reference to the written instruction to make the investment, and
- (c) the number of the cheque for the amount to be invested.

The law practice is not required to record the above particulars in the register of investments if the particulars are recorded elsewhere, for example, in the controlled money register.

12.3.2 Example of Investment Record:

Philpott & Associates Investment Record	
NAME: _____ <small>(on whose behalf investment is made)</small>	
ADDRESS: _____	
MATTER REFERENCE: _____	
Name in which investment is made (Account name): _____	
Source of Investment: General Trust Account/Controlled Money Account/Transit Money/Power Money <small>Strike out not applicable</small>	
Institution: _____	
Type of Investment: _____	Date of Investment: _____
Original Investment Amount: \$ _____	Cheque Number: _____
Investment Terms: _____	Document Identifier: _____
Date of Written Direction: _____	
Maturity/Repayment Details: _____	
Other information: _____	

TABLE 12.3.2 EVIDENCE OF INVESTMENT

12.3.3 Evidence of Investment

A copy of the document evidencing the investment should be attached to the above record. For example, if the law practice is instructed to buy shares on behalf of the client, the practice should keep a copy of the share certificate and attach it to the investment record. The law practice should also create an identifier (or a short description) referring to the written authority by the client.

12.4 Costs

Costs cannot be withdrawn from the investment of trust money account pursuant to Rule 42. Costs can only be withdrawn pursuant to the instructions of the person on whose behalf the investment was made.

12.5 Trust Account Statement

Rules 52 and 53 prescribe that trust account statements must be sent to each person for whom or on whose behalf trust money (other than transit money and written direction money) is held or controlled by the law practice or an associate of the practice. This includes investment of trust money. See details at Chapter 5 of the Legal Accounting Handbook.

13. EXTERNAL EXAMINER'S REPORT – RULES 65 TO 69

This section deals with the requirements related to the preparation of the External Examiner's Report for trust money.

13.1 When is a report required?

A law practice must have its trust records externally examined once in each financial year: Section 155(1). The accounting period covered by the examination is 1 April to 31 March each year.

There are two instances where the law practice is required to prepare an External Examiner's Report, these being when the law practice:

- (a) received or held trust money;
- (b) ceases to be authorised to receive trust money or ceases to engage in legal practice in New South Wales and has held a trust account: Rule 68 - final external examination.

The law practice is not required to have its trust records externally examined if it only received or held trust money subject to specific power pursuant to an electronic lodgment network operator's settlement scheme (such as PEXA); written direction; and/or transit money.

13.2 Who can conduct an external examination?

Section 155(1) provides that a law practice must have its trust records externally examined by a suitably qualified person appointed in accordance with Rule 66(1) as an external examiner.

Section 156 provides that only persons designated or within a class designated under Rule 65 may be appointed as external examiners. An associate of a law practice cannot be appointed as an external examiner to examine the law practice's trust records.

Rule 65 designates the following classes of persons eligible to be appointed as external examiners:

- (a) members of CPA Australia holding a current Public Practice Certificate issued by that body;
- (b) members of Chartered Accountants Australia and New Zealand holding a current Certificate of Public Practice issued by that body;
- (c) members of the Institute of Public Accountants holding a current Professional Practice Certificate issued by that body;
- (d) persons registered as auditors under Part 9.2 of the Corporations Act;
- (e) employees or agents of the designated local regulatory authority - the Law Society Council.

The persons listed above must have also successfully completed a course of education approved by the Legal Services Council after consultation with the Law Society Council.

Schedule 4 of the LPUL provides at Section 20 that a person who, immediately before the commencement day, was an approved external examiner for the purposes of the old legislation is taken, on and after that day, to be duly appointed as an external examiner for the purposes of this Law until the end of 30 June of the second year after the year in which the commencement day occurs, whether or not the person meets the requirements of Section 156.

13.3 Appointment, Cessation or Termination of an External Examiner

Rule 66 provides that a law practice must in writing appoint a suitably qualified person as an external examiner and must provide the designated local regulatory authority - the Law Society Council written notification of the appointment as follows:

- (a) within 30 days after first receiving trust money (other than trust monies subject to specific power pursuant to an electronic lodgment network operator's settlement scheme [such as PEXA]; written direction; and/or transit money) – written notice of the external examiner appointed by the law practice as its external examiner; and
- (b) within 7 days after an external examiner ceases to be the external examiner of the law practice – written notice of that fact; and
- (c) within 30 days after an external examiner ceases to be the external examiner appointed by the law practice – written notice of the successor external examiner appointed by the law practice.

The appointed external examiner may cease the appointment by notifying the law practice and the law practice submits the Notification of Cessation. The form for the Notification of Cessation of an External Examiner is available on the Law Society's website at: <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/notification-forms>

Rule 66(3) provides that a law practice may terminate the appointment of an external examiner with the prior approval of the Law Society Council, being the designated local regulatory authority. Approval may be provided if the Law Society Council is satisfied that it is reasonable in the circumstances for the practice to terminate the appointment. The Law Society Council may require the law practice to supply any evidence when considering the request for approval. The form for the Approval of Termination of an External Examiner is available on the Law Society's website at: <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/notification-forms>

134 Powers of External Examiner

The external examiner can exercise a wide range of powers conferred under the LPUL.

When an external examiner is appointed to conduct an examination of a law practice's trust records, he/she may also examine the affairs of the law practice for the purposes of and in connection with the examination of the trust records.

An external examiner may require the law practice or any person who has or had control of documents relating to the affairs of the law practice to give the examiner either or both of the following:

- (a) access to the documents relating to the affairs of the law practice the examiner reasonably requires;
- (b) information relating to the affairs of the law practice the examiner reasonably requires (verified by statutory declaration if requested).

The external examiner may inspect, make copies of, or retain the documents provided.

135 External Examiner's Report

The External Examiner must give the designated local regulatory authority - Law Society Council a written report of the examination at a time or within a period determined by the Legal Services Council and published on the Council's website. Each external examiner must report in accordance with the standard form published by the designated local regulatory authority – the Law Society Council.

The standard form known as the External Examiner's Report, together with the forms for Parts A and B of the Law Practice Confirmation and Trust Money Statement, are made available via an online lodgement system in late March each year on the Law Society website.

The report must include an examination of all general trust accounts and other accounts where trust money was held or received (e.g. controlled money accounts, accounts subject of a power excluding power money pursuant to an electronic lodgement network operator's settlement scheme (such as PEXA)) by the law practice during the reporting period.

136 Final External Examination – Rule 68

If the law practice ceases to be authorised to receive trust money or ceases to engage in legal practice and the practice has held a trust account, the law practice must appoint an external examiner, if one is not already appointed and available, and arrange for the external examiner to examine and report on the trust records of the law practice:

- (a) in respect of the period since an external examination was last conducted; **and**
- (b) in respect of each period of 12 months after that period; **and**
- (c) in respect of any remaining period thereafter;

during which, or any part of which, the law practice held trust money.

The external examiner's report completed under this Rule is required to be lodged by the law practice with the Law Society Council, being the designated local regulatory authority, within 60 days after the end of the period to which the report relates.

14. STATUTORY DEPOSIT

Section 46 of the Application Act and Clause 9(1) of the Regulations require that, out of the money that is paid to a general trust account, the law practice must deposit and keep deposited with the Law Society an amount not less than the minimum amount calculated in accordance with Clause 10 of the Regulations. This is known as the statutory deposit. Any amount paid on statutory deposit is repayable on demand.

Each principal of a law practice must ensure that reasonable steps are taken to ensure that the law practice complies with its statutory deposit obligations.

The accounting periods relating to statutory deposits are referred to as 'applicable periods' and are the 3 months ending on 31 March, 30 June, 30 September and 31 December of each year. Calculation of the amount to be maintained on statutory deposit with the Law Society is based on the general trust account's authorised ADI statement balance and any applicable amount held on statutory deposit. At all times, if the combined balance is less than \$10,000, then no statutory deposit account is required to be maintained.

14.1 When and How Amount is to be Deposited with the Law Society

The law practice must deposit the calculated amount into a statutory deposit account, held by the same authorised ADI that maintains its general trust account not later than 20 banking days after the end of each applicable period or, if an amount was repaid (withdrawn), not later than 20 banking days after the day on which the money was repaid.

If a law practice is unable to make the required statutory deposit, the law practice must request the Law Society to determine the amount that it is to deposit. A form is available on the Law Society's website at <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/statutory-deposits>. If a determination is made by the Law Society, the required amount must be deposited not later than 5 banking days after the Law Society notifies the law practice of its determination.

The following will assist in calculating the amount to be held on statutory deposit. Note that the calculation of the statutory deposit requires a review of the general trust account's balance on the authorised ADI statements, not the reconciled cash book balance.

14.2 New General Trust Accounts

If the general trust account was opened during the previous applicable period:

- (a) Review the authorised ADI statements for the period beginning with the account opening date to the end of the previous applicable period to determine the minimum balance. **Note:** The opening balance of nil should not be used as the minimum balance.
- (b) If the minimum balance is less than \$10,000, there is no requirement to lodge a statutory deposit, and the position is not required to be reviewed again until the next applicable period.
- (c)
 - (i) If the minimum balance is \$10,000 or greater, this minimum balance (rounded up to the next hundred dollars) is the statutory deposit, subject to the further calculation referred to in (ii) below.
 - (ii) Complete a further calculation as per (a) above for the period beginning with the end of the previous applicable period and ending with the 15th banking day after the end of that period to determine the minimum balance for this period. If this minimum balance is lower than the minimum balance calculated in (a) above but is still \$10,000 or more, then you are only required to deposit 80% of this lower minimum balance (rounded up to the next hundred dollars). If this (80%) minimum balance is less than \$10,000, no statutory deposit is required, and the position is not required to be reviewed again until the next applicable period.
- (d) The statutory deposit is required to be made not later than 20 banking days after the end of the previous applicable period.
- (e) If the law practice is unable to deposit the required amount, see Chapter 14.6 for the procedure to be followed.

- (f) A Statutory Deposit ledger account should be established to record this transaction and all subsequent transactions. This transaction will be recorded as a debit entry.
- (g) The statutory deposit must be maintained at this level until the next applicable period, except where a repayment (withdrawal) is made. (See Chapter 14.7 for the procedure to be followed where a withdrawal is made.)

14.3 Continuing General Trust Account where No Statutory Deposit Held

If the general trust account has been open for some time and the law practice has not held a statutory deposit during the previous applicable period:

- (a) Review the authorised ADI statements for the period beginning with the first day of the previous applicable period to the end of that period to determine the minimum balance for this period.
- (b) Follow the procedures (b) to (g) in Chapter 14.2.

14.4 Continuing General Trust Account where Statutory Deposit Held

If the general trust account has been open for some time and the law practice held a statutory deposit during the previous applicable period:

- (a) Review the authorised ADI statements for the period beginning with the first day of the previous applicable period to the end of that period. Select the lowest authorised ADI statement balance and add the amount held on statutory deposit on that day to determine the minimum balance for this period.
- (b) If this minimum balance is less than \$10,000, there is no requirement to maintain a statutory deposit and the current statutory deposit may be withdrawn. The position is not required to be reviewed again until the next applicable period. Any withdrawal should be recorded in the Statutory Deposit ledger account as a credit entry.
- (c)
 - (i) If this minimum balance is \$10,000 or greater, this is the required statutory deposit (rounded up to the next hundred dollars), subject to the further calculation referred to in (ii) below.
 - (ii) Complete a further calculation as per (a) above for the period beginning with the end of the previous applicable period and ending with the 15th banking day after the end of that period. If this minimum balance is lower than the minimum balance calculated in (a) above but is still \$10,000 or more, then you are only required to deposit 80% of this lower minimum balance (rounded up to the next hundred dollars). If this (80%) minimum balance is less than \$10,000, there is no requirement to maintain a statutory deposit, the current statutory deposit may be withdrawn, and the position is not required to be reviewed again until the next applicable period.
- (d) The current statutory deposit should therefore be adjusted as follows:
 - (i) Where the new required statutory deposit is less than the current statutory deposit, the current statutory deposit may be reduced to the level of the new required statutory deposit (see Chapter 14.7 for procedures).
 - (ii) Where the new required statutory deposit is more than the current statutory deposit, it is a requirement to increase the current statutory deposit to the level of the new required statutory deposit.
- (e) The adjustment (increase) in the statutory deposit is required to be made not later than 20 banking days after the end of the previous applicable period.
- (f) If the law practice is unable to deposit the required amount, see Chapter 14.6 for the procedure to be followed.
- (g) It is a requirement to maintain the required statutory deposit at this level until the next applicable period, except where a withdrawal is made. (See Chapter 14.7 for the procedure to be followed where a withdrawal is made.)

14.5 More Than One General Trust Account

Where more than one general trust account is operated, aggregation of the accounts for the purposes of the calculation will not be required in most cases. Whilst it is difficult to summarise all possible situations, the following common examples may assist:

- A law practice with a head office which has a trust account with an authorised ADI and with a branch office which has a separate trust account with a separate authorised ADI - separate calculations for each account should be performed. A separate statutory deposit should be maintained for each office, if one is required.
- A law practice with one office which has two separate trust accounts with two separate authorised ADIs - separate calculations for each account should be performed. A separate statutory deposit should be maintained for each account, if one is required.

The procedure for calculation is the same as outlined previously.

14.6 Insufficient Funds to Make Statutory Deposit

If the law practice is unable to comply with the requirement to make a statutory deposit, it must request the Law Society (Manager, Trust Accounts Department) to determine the amount that the law practice is to deposit and keep deposited with the Society. A form titled Request for Determination of Statutory Deposit is available from the Law Society's Website at <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/statutory-deposits>

This situation would arise if the calculated amount of the statutory deposit has caused, or would cause, any of the following:

- an overdraft of the trust authorised ADI statement balance;
- an overdraft of the trust cash book;
- insufficient funds to operate the general trust account.

14.7 Withdrawals from Statutory Deposit During any Applicable Period

The law practice should monitor its general trust account to ensure that it is not overdrawn. If the law practice believes that a withdrawal from the statutory deposit is necessary, the practice should request the authorised ADI to transfer the necessary amount to the practice's general trust account. (Note that this involves different procedures depending on the authorised ADI with which the account is maintained.). The law practice can make its own determination as to the amount to be withdrawn. It is not necessary to seek the permission of the Law Society Council, being the local regulatory authority, to make the withdrawal.

Clause 10(3) of the Regulations provides the mechanism for the recalculation and adjustment of the statutory deposit when a repayment (withdrawal) from the statutory deposit is made pursuant to Section 47 of the Application Act.

After the withdrawal, the law practice must recalculate the amount to be deposited. The first step is to determine whether or not a statutory deposit is required. The following procedure should be carried out:

- Review the authorised ADI statements for the period beginning with the start of the current applicable period and ending with the 15th banking day after the withdrawal. Select the lowest authorised ADI statement balance and add the amount held on statutory deposit on that day to determine the minimum balance for this period.
- Review the authorised ADI statements for the period beginning with the start of the previous applicable period to the end of that period. Select the lowest authorised ADI statement balance and add the amount held on statutory deposit on that day to determine the minimum balance for this period.
- If either of the minimum balances (a) and (b) is less than \$10,000, there is no requirement to maintain a statutory deposit, the current statutory deposit may be withdrawn, and the position is not required to be reviewed again until the next applicable period.
- If the minimum balance of both (a) and (b) is \$10,000 or greater, the lower balance of (a) or (b) (rounded up to the next hundred dollars) is the new required statutory deposit, and the current statutory deposit should be adjusted as follows:
 - Where the new required statutory deposit is less than the current statutory deposit, the current statutory deposit may be reduced to the level of the new required statutory deposit.
 - Where the new required statutory deposit is more than the current statutory deposit, it is a requirement to increase the current statutory deposit to the level of the new required statutory deposit.

- (e) The adjustment (increase) in the statutory deposit must be made not later than 20 banking days after the day on which the money was repaid (withdrawn).
- (f) It is a requirement to maintain the statutory deposit at this level until the next applicable period, except where a further withdrawal is made in the current applicable period.
- (g) If, during the current applicable period, money is repaid (withdrawn) on more than one occasion, the above procedures for withdrawals operate in relation to each of those withdrawals.
- (h) If the law practice is unable to deposit the required amount, see Chapter 14.6 for the procedure to be followed.
- (i) All deposits to and withdrawals from the statutory deposit account should be recorded in the Statutory Deposit ledger account.

14.8 Procedures in Opening/Depositing/Withdrawing Statutory Deposit

Each authorised ADI has its own procedures relating to the opening of a statutory deposit account and deposits to and withdrawals from that account.

In the first instance, the law practice should approach the branch of the authorised ADI with which the general trust account has been opened. If the staff are not familiar with law practice trust accounts and statutory deposits, they should be encouraged to refer to their ‘Operations Manual’.

Generally, when opening a new statutory deposit account, the law practice must write a letter to the authorised ADI, on law practice letterhead and signed by the signatory/s, requesting the authorised ADI to open a statutory deposit account held by the authorised ADI.

If the staff at the branch are unable to assist, then the law practice should email a request for assistance to accounts@lawsociety.com.au and indicate what authorised ADI your general trust account is held with.

When withdrawing money from the general trust account to deposit into a statutory deposit account, an entry should be made in the trust cash book recording the withdrawal/payment.

When withdrawing money from the statutory deposit account, the money must be deposited directly into the law practice’s general trust account and a trust receipt should be issued to record the receipt of the funds into the general trust account.

14.9 Calculation Summary

The following table has been included to assist with the calculation of the statutory deposit:

Required	Example	
1. Obtain the authorised ADI statements for the period 1 April 2019 to 30 June 2019 (or from the date commencement of the general trust account if it was opened during this applicable period).		
2. Select the lowest balance as per the authorised ADI statements during this period.	06.04.2019	\$23,600
3. Obtain the statutory deposit balance as at the date of this lowest balance.	06.04.2019	\$50,000
4. Add the authorised ADI statement balance (2) and the statutory deposit balance (3).		\$73,600
<p>This is the minimum balance (rounded up to the next hundred dollars) required to be held on statutory deposit for the period 1 April 2019 to 30 June 2019 unless there is a lower minimum balance in the subsequent period of 15 banking days after 30 June 2019. See (8) below.</p>		

Required	Example	
5. Compare the figure (4) with the amount currently held on statutory deposit. The difference is the required increase in the amount of the current statutory deposit unless there is a lower minimum balance in the subsequent period of 15 banking days after 30 June 2019. See (8) below.	Minimum Balance	\$73,600 (4)
	Amt currently held	\$50,000
	Increase Dep Required	\$23,600
6. This increase in the amount of the statutory deposit is required to be made not later than 20 banking days after 30 June 2019 unless there is a lower minimum balance in the subsequent period of 15 banking days after 30 June 2019. See (8) below.		
7. Obtain the authorised ADI statements for the period of 15 banking days after 30 June 2019 (being 1 July 2019 to 19 July 2019)		
8. Complete a further calculation as per (2), (3) & (4) above for this period: Lowest Balance +Statutory deposit on this date Minimum balance for this period.	16.07.2019 Amt on Deposit Minimum Balance	\$7,600 \$50,000 \$57,600
9. Select the lower minimum balance of (4) and (8). As the minimum balance of (8) is lower than (4), calculate 80% of this figure (rounded up to the next hundred dollars), which is the required statutory deposit	Lower Min Balance (8) Req'd Deposit (80%, rounded up)	\$57,600 \$46,100
10. Compare this 80% figure in (9) above with the amount currently held on statutory deposit and adjust the difference. As the amount required to be held on statutory deposit is less than the amount currently held on deposit, the current statutory deposit may be reduced by \$3,900 to the level of the new required statutory deposit.	Amt currently held Amt req'd to be held Difference	\$50,000 \$46,100 (\$3,900)
11. Where the required statutory deposit per (9) above is greater than the amount currently held on statutory deposit, the law practice is required to increase the current statutory deposit to the level of the new required statutory deposit. If the practice is unable to make the increased deposit, select an amount that will leave the practice with sufficient funds to operate its general trust account and seek in writing from the Trust Accounts Department a determination of the amount to be deposited (see Chapter 14.6).		

14.10 General

There is no need to advise the Law Society of deposits to or withdrawals from the statutory deposit account as the Society receives monthly statements from each authorised ADI. A trust account statement is not required to be sent to the Law Society.

Also, a statutory deposit calculator is available on the Law Society's website at <https://www.lawsociety.com.au/practising-law-in-NSW/trust-money-and-fidelity-fund/statutory-deposits/calculator> which works through each of the above scenarios and may assist the law practice to calculate the amount to be held on statutory deposit.

If any difficulty is experienced with the calculation of the statutory deposit at any time, call the Trust Accounts Department for assistance on (02) 9926 0337.

15. GST AND TRUST ACCOUNTING

15.1 General

It is not the intention of this Handbook to discuss GST accounting other than to indicate that there are no additional accounting entries required in the trust records because of GST.

Legal practitioners and bookkeepers need to be aware of the impact of GST on the general accounting records of a legal practice and which records need to be maintained in order to record the GST component of a transaction.

15.2 Taxable Supply

Performance of the majority of legal work is a taxable supply. Therefore, GST is payable for all legal work completed on or after 1 July 2000. GST is also payable for legal work completed on or after 1 July 2000 and which started before that date if certain transitional provisions apply. There may be exceptions to these general principles if, for example, the legal work is not a taxable supply, or if done on an ATO approved agency method.

15.3 Disbursements

It is the practice in the legal profession for some or all of the costs incidental to the supply of legal services to be described as disbursements and shown or charged separately on the bill issued to the client. The payment of disbursements will depend on the arrangements made between the law practice and the client.

While these incidental costs are generally described as disbursements, for GST purposes a more accurate analysis is required, that is, if “disbursements” have been incurred by a law practice in the course of making a supply of legal service to clients, then those disbursements should be included in the value of the supply when GST is calculated. It is often the case however, that amounts are paid to third parties, with the law practice acting as merely the agent of the client. In these circumstances, those amounts should be excluded from the figure on which GST for the legal services is calculated.

The issue is how to identify the different classes of disbursements and the GST treatment of each class.

Rowe and Maw v. Customs and Excise Commissioners (1975) 2 All ER 444 is the authority for the proposition that there is an important distinction to be made between different classes of disbursements which a law practice may expend on behalf of the client which lead to different consequences for the incidence of GST.

On one hand, the law practice (like any other agent) may purchase goods or services for a client such as paying a barrister. In these cases, the goods or services are supplied to the client, not to the law practice who merely acts as an agent to make the payment. In these circumstances no GST should be payable by the practice because such payments form no part of the practice’s services to the client.

On the other hand quite different considerations apply where the goods or services are supplied to the law practice (as principal) to enable the practice to effectively perform the services supplied to the client. In these cases GST is payable by the law practice. It does not matter how the practice recovers such expenditure from the client.

15.4 Incurring Disbursements

There are two ways in which a law practice may incur a disbursement.

The law practice may incur it as agent for its client (e.g. the provision of a building inspection report or travel arrangements for the client). The GST fact sheet on Legal Fees and Charges states: “When you act as an agent for your client, the client is considered to have made the transaction, for GST purposes”.

Under the GST regime, it is prudent, if you are acting as *agent*, to make it clear to the supplier that you are acting in that role, and to have the invoice made out directly to your client. You must also have the agreement of your client to enable you to act in this way.

Alternatively you may incur a “traditional” disbursement. This is an expense incurred by the law practice as a principal and for which the practice is primarily liable, but which is to be reimbursed by the client as part of the legal costs. Traditional disbursements include:

- (a) telephone or transport expenses for the practitioner;
- (b) counsel fees;
- (c) medical reports obtained under the medico-legal agreement.

If the contracting party is the practitioner as principal and the liability for payment is documented as resting with the practitioner, then the reimbursement by the client of the disbursement is treated as received for a supply provided by the law practice as distinct from the original supplier.

Under the GST regime, it is vital that legal practitioners understand the distinction between these two types of disbursement and are clear about what type of disbursement is being incurred.

The question of whether the practitioner is acting as an agent or as principal is a question of law and must be determined in each particular circumstance. Law practices cannot unilaterally decide to act as an agent – it is a matter of agreement between practitioner and client.

It is advisable for any such agreement to be documented in the letter of engagement.

15.5 Accounting Treatment for Disbursements Incurred by the Law Practice Acting as Principal or Agent

15.5.1 The law practice as Principal

If the contracting party is the law practice, then the payment is made for a service provided by the practice, and any payment directly by the client or from the trust account satisfies a debt of the practice, that is, the liability is that of the practice only. For example, payments for search fees and barristers’ fees may fall into this category. In these circumstances it is the responsibility of the law practice to pass on GST to the client as the client is not the recipient of the supply and is not the contracting party to the transaction.

For example, the barrister issues a tax invoice in the name of the recipient (the law practice) for, say, \$5,000 and \$500 GST. The law practice pays the amount from the office account and claims an input tax credit of \$500. The practice then bills the client and adds GST (which in this example is \$500 which is 10% of \$5,000 as the practice has not added a mark up on the value of the service provided by the barrister).

The amount is then paid by the client to the practice or is transferred from the trust account to the practice’s general account in satisfaction of the debt owing by the client. The practice records the receipt of GST from the client and accounts for \$500 GST to the ATO. If the client is registered then the client can claim the \$500 GST as an input tax credit. The law practice in these circumstances should pay all money for which the practice is liable from the general account and may then recover the full amount from the trust account. The money should only be recovered from the trust account after a bill has been issued and the client has authorised the transfer (refer to Chapter 3.3 for more details). If this method is adopted then there is no need for the trust account system to account for GST although the law practice’s accounting system will need to deal with the GST.

15.5.2 The law practice as Agent

If the contracting party is the client, the payment from the trust account is made as agent for the client. There is no entitlement other than by the client to the input tax credit and therefore in this situation for the law practice to account for the GST. These disbursements can be paid from the trust account.

15.6 Relationship of Law Practice and Client

As a matter of law, a law practice cannot act as agent without the authority of the client, either express or implied. The law practice should ensure that:

- (a) the law practice has a written retainer agreement with the client; and
- (b) the retainer agreement addresses the issue of the law practice acting as agent for the client.

15.7 Resources

The following resources would be a useful guide in respect of the application of GST to legal services:

- Goods and Services Tax Determination (GSTD) 2000/3 - Transitional arrangements: to what extent is the supply of services made on or after 1 July 2000, where the supply spans that date?
- Goods and Services Tax Ruling (GSTR) 2000/37 – disbursements, agency relationships and the application of the law.
- Goods and Services Tax Advice (GSTA) TPP 042 - Is a payment to a lawyer by a client to reimburse the lawyer for a payment of a tax, fee, or charge (tax) that is excluded from the GST by a determination of the Treasurer consideration for a taxable supply by the lawyer if the lawyer paid the tax in their own right?
- GSTA TPP 043 - Is a client's reimbursement to a lawyer for a payment of a tax, fee, or charge (tax) that is not subject to GST consideration for a taxable supply by the lawyer if the lawyer paid the tax as an agent for the client?
- PS LA 2009/9 - Goods and services tax, regarding the recovery of legal costs.
- Costs Guidebook, 7th Edition, The Law Society of New South Wales - Chapter 5: Goods and Services Tax.

16. TRUST ACCOUNT INVESTIGATIONS

16.1 Appointment of Investigators

The power to appoint trust account investigators is contained in Section 162 which states:

Section 162 provides for the appointment of investigators and reads:

- (1) The Law Society Council, being the designated local regulatory authority, may investigate, or may in writing appoint a suitably qualified person as an external investigator to investigate, the affairs or specified affairs of a law practice.
- (2) The appointment may be made generally or for the law practice specified in the instrument of appointment, or in relation to a particular external investigation.

16.2 Production of Records & Information

Section 370 applies to the following activities:

- (a) trust records examination;
- (b) trust records investigation; and
- (c) compliance audit in relation to a law practice.

Section 370 provides that, for the purpose of carrying out an activity to which this section applies, an investigator may, on production of evidence of his or her appointment for inspection, require the law practice or any person who has or had control of documents relating to the affairs of the law practice to give the investigator either or both of the following:

- (a) access to the documents relating to the affairs of the law practice the investigator reasonably requires; and
- (b) information relating to the affairs of the law practice the investigator reasonably requires (verified by statutory declaration if the requirement so states).

Section 371 applies to a complaint investigation and provides:

- (1) For the purpose of carrying out a complaint investigation in relation to a lawyer or law practice, an investigator may, by notice served on the lawyer or a legal practitioner associate of the law practice (as the case requires), require the lawyer or associate to do any one or more of the following:
 - (a) to produce, at or before a specified time and at a specified place, any specified document (or a copy of the document);
 - (b) to provide written information on or before a specified date (verified by statutory declaration if the requirement so states);
 - (c) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.
- (2) For the purpose of carrying out a complaint investigation in relation to a lawyer or law practice, the investigator may, on production of evidence of his or her appointment, require any person (other than the lawyer) who has or had control of documents relating to the subject matter of the complaint to give the investigator either or both of the following--
 - (a) access to the documents relating to the affairs of the lawyer that the investigator reasonably requires;
 - (b) information relating to the affairs of the lawyer that the investigator reasonably requires (verified by statutory declaration if the requirement so states).

....

- (5) If a notice under subsection (1) is served on the lawyer or legal practitioner associate by the investigator personally, the investigator must produce evidence of his or her appointment for inspection at the time of service.

16.3 Additional powers in relation to incorporated legal practices

Part 7.4 of the LPUL also gives investigators additional powers in relation to incorporated legal practices. Section 383 allows for the examination of persons, Section 384 allows for the inspection of books and Section 385 provides the power to hold meetings. These powers are the same as those conferred by the Australian Securities and Investments Commission Act, 2001 (Cth).

16.4 Costs of External Investigation

Section 166 provides that:

- (1) If:
 - (a) an investigator states in his or her report of an external investigation that there is evidence that a contravention of this Law has been committed or evidence that a default (within the meaning of Part 4.5) has occurred in relation to the law practice whose affairs are under investigation; and
 - (b) the designated local regulatory authority - the Law Society Council is satisfied that the contravention or default is wilful or of a substantial nature.
- (2) The designated local regulatory authority – the Law Society Council may recover the amount (as determined by it) of all or part of the costs of the external investigation as a debt payable to it by the law practice.
- (3) The amount of the costs must be reasonable, and is subject to any appeal or review mechanism provided in applicable jurisdictional legislation.

16.5 Definition of “Affairs”

Section 6 defines “affairs” of a law practice includes the following:

- (a) all accounts and records required by or under this Law or the Uniform Rules to be maintained by the law practice or an associate or former associate of the law practice;
- (b) other records of the law practice or an associate or former associate of the law practice;
- (c) any transaction—
 - (i) to which the law practice or an associate or former associate of the law practice was or is a party; or
 - (ii) in which the law practice or an associate or former associate of the law practice has acted for a party.

16.6 External Investigations

Section 161 states:

The principal purposes of an external investigation are to ascertain whether a law practice has complied with or is complying with the requirements of this Part and to detect and prevent fraud or defalcation, but this section does not limit the scope of an investigation or the powers of an external investigator.

Section 163 states that the designated local regulatory authority - the Law Society Council may undertake, or the instrument of appointment of an external investigator may authorise the investigator to undertake, external investigations:

- (a) in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of the law practice; or
- (b) where the designated local regulatory authority - the Law Society Council otherwise considers it appropriate to do so.

The designated local regulatory authority - the Law Society Council has agreed to a system of routine external investigations which are scheduled on a regular basis to comply with Section 163(b). The frequency of the routine external investigations depends on the perceived “risk” of the law practice.

External investigations are also scheduled as particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of a law practice are drawn to the attention of the Trust Accounts Department. The source of this information is varied but generally information is received from the Manager, Professional Standards Department; the Commissioner, Office of the Legal Services

Commissioner; notifications pursuant to Section 154; and correspondence/ information from employees and clients of the law practice.

Such external investigations take priority over routine external investigations that have been scheduled.

16.7 Notice of Appointment

The current external investigator's Notice of Appointment reads:

On the XX/XX/XXXX the Council of the Law Society of New South Wales appointed XXXXXX (a specimen of whose signature appears below) to investigate the affairs of law practices, which appointment was made generally pursuant to Section 162(1) and (2) of the Legal Profession Uniform Law (NSW).

The appointment authorises the investigator to conduct either or both of the following external investigations:

- (a) in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of the law practice;
- (b) where the Law Society Council, as the designated local regulatory authority pursuant to Section 11 of the Legal Profession Uniform Law Application Act 2014, otherwise considers it appropriate to do so.

Administratively, investigators assigned to a routine external investigation may only contact clients and third parties (other than ADI's, other financial institutions, former employees and external accountants), at the direction of a section leader or the Chief Trust Account Investigator.

16.8 Conduct of Investigation

Routine external investigations vary in length depending on the size of the law practice and the standard of accounting and file records. Routine external investigations may be any one of the following types:

- (a) investigation at a law practice's request;
- (b) first investigation;
- (c) compliance investigation;
- (d) file verification investigation;
- (e) no notice investigation;
- (g) final investigation;
- (h) risk analysis review;
- (i) external examiner's report follow up;
- (j) trust verification (no trust money).

16.9 Investigation Reports and Letters

A report pursuant to Section 165 is required to be submitted to the Law Society Council, being the designated local regulatory authority, as soon as practicable after the completion of each external investigation. An investigation letter may be issued as part of a routine external investigation when breaches of the LPUL or LPUGR of significance are noted and which, in the opinion of the investigator, are not considered to be wilful, so as to assist the law practice to identify the breaches and adopt appropriate procedures to rectify them. The investigator is expected to discuss all identified breaches and the content of an investigation letter, if issued, with a principal of the law practice, and may also discuss such breaches with the practice's accounting staff, if appropriate.

16.10 Wilful and/or substantial breaches

In the event that there is evidence that a breach of the LPUL or LPUGR has been committed or evidence that a default (within the meaning of Part 4.5 of the LPUL) has occurred in relation to the law practice whose affairs are under routine external investigation or external investigation, and the breach(es), in the opinion of the investigator is/are wilful or substantial, then the investigator is required to complete and forward a report pursuant to Section 165 to the Law Society Council, being the designated local regulatory authority, addressing each element of the breach(es). This report may also be submitted to the Manager, Professional Standards Department for consideration of the appropriate action.

Further, pursuant to Section 386, if during the course of a routine external investigation or external investigation, an investigator becomes aware of any matter that the investigator thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the investigator must refer the matter to the designated local regulatory authority - the Law Society Council to consider whether disciplinary action should be taken. This report may also be submitted to the Manager, Professional Standards Department for consideration of the appropriate action.

16.11 Obligations of lawyers and other persons

Section 370(2) prescribes that a person who is subject to a requirement under Section 370(1) to provide access to documents or provide information must comply with the requirement.

Section 387 prescribes that a person must not, without reasonable excuse, obstruct an investigator exercising a function under the LPUL.

Section 388 prescribes that a lawyer must not mislead an investigator in the exercise of any function under Chapter 7 of the LPUL.

Section 466 prescribes that in respect of a requirement under:

- (a) Section 154 to give written notice of an irregularity in connection with a trust account, a trust ledger account or trust money; or
- (b) Section 348 to give access to documents or information; or
- (c) Section 370 to produce documents or provide information; or
- (d) Section 371 to produce documents, provide information or otherwise assist in, or cooperate with, an investigation; or
- (e) Section 375(1)(j) to do a specified thing; or
- (f) Part 7.4 to produce documents, provide information or do anything else under that Part,

pursuant to Section 466(2), the validity of the requirement is not affected, and a person is not excused from complying with the requirement, on -

- (a) the grounds of legal professional privilege or any other duty of confidence, or
- (b) the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents,

and, pursuant to Section 466(3), a person is not excused from complying with the requirement on the ground that compliance with the requirement, or an answer, document, information or assistance provided in complying with the requirement, may tend to incriminate the person.

Section 466(6) prescribes that a failure of an Australian lawyer or Australian-registered foreign lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.

Pursuant to Section 466(7), the designated local regulatory authority - the Law Society Council may suspend an Australian practising certificate or an Australian registration certificate while a failure by the holder to comply with the requirement continues.

17. SOLICITORS CONDUCT AND PRACTICE RULES

With the introduction of the LPUL, the solicitors' conduct and practice rules are now contained in Uniform Rules as follows:

- Legal Profession Uniform Australian Solicitors' Conduct Rules 2015; and
- Legal Profession Uniform Legal Practice (Solicitors) Rules 2015.

The conduct and practice rules were previously contained in the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013 and before that the Revised Professional Conduct and Practice Rules 1995.

Law practices must be aware of Rule 6 of the Legal Profession Uniform Legal Practice (Solicitors) Rules 2015 when transferring a solicitor's practice. The Rule states:

- 6.1 When a solicitor intends to transfer to another solicitor the whole or part of the solicitor's practice, including clients' work in progress, and to put the other solicitor in possession of the documents held by the solicitor on behalf of clients, before the solicitor delivers possession of the practice to the solicitor acquiring it the solicitor must give to each client at least 14 days (or such other period as may be reasonable in the circumstances) notice in writing of:
 - 6.1.1 the intended transfer of documents to the solicitor acquiring the practice, unless a contrary direction is received from the client; and
 - 6.1.2 the client's right to give to the solicitor a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.
- 6.2 Any notice sent to a client on whose behalf the solicitor holds money in trust or under the solicitor's control must advise the client of:
 - 6.2.1 the balance of money held on the client's behalf; and
 - 6.2.2 the solicitor's intention to transfer the relevant account to the solicitor acquiring the practice, unless advised by the client to the contrary; and
 - 6.2.3 the client's right to give to the solicitor a contrary direction as to the manner in which the solicitor should deal with the account on the client's behalf.
- 6.3 Rules 6.1 and 6.2 do not apply where a new partner is admitted to a partnership which continues to conduct the practice.

18. BUSINESS MANAGEMENT AND CONTROL

18.1 Opening and maintaining files

Rule 91E states:

- (1) A law practice must open a file in respect of each matter for which the law practice receives instructions to provide legal services to a person.
- (2) The file must be opened as soon as practicable after the law practice receives the instructions.
- (3) The file must contain or have endorsed on it—
 - (a) the particulars required by Rule 93(2)(a)–(d) (which are detailed in the following section 18.2 of the Legal Accounting Handbook); and
 - (b) the contact details used by the law practice to contact the person to whom it is providing the legal services.

18.2 Register of files opened

Rule 93 states:

- (1) A law practice must maintain a register of files opened.
- (2) The register of files opened must, in respect of each matter for which the law practice receives instructions to provide legal services to a person, record the following:
 - (a) the full name and address of the person;
 - (b) the date of receipt of the instructions;
 - (c) a short description of the services which the law practice has agreed to provide;
 - (d) an identifier;
 - (e) the location of any regulated property relating to the matter.
- (2A) For the purposes of Subrule (2)(e), if the regulated property is a document that is stored on a server and may be accessed from multiple locations, the location of the regulated property is to be recorded as the law practice's principal place of practice.

Section 6 of the LPUL states that regulated property, in relation to a law practice, means the following:

- (a) trust money or trust property received, receivable or held by the law practice;
- (b) interest, dividends or other income or anything else derived from or acquired with money or property referred to in paragraph (a);
- (c) documents or records of any description relating to anything referred to in paragraph (a) or (b);
- (d) any computer hardware or software, or other device, in the custody or control of a law practice or an associate of the law practice by which any documents or records referred to in paragraph (c) may be produced or reproduced in visible form;
- (e) client files.

Rule 95A(1) provides that a register of files opened by a law practice must be –

- (a) in the English language, and
- (b) legible, and
- (c) kept in a single document or in any other manner that enables a single document to be compiled, and
- (d) kept at the premises of the law practice at all times, and
- (e) accessible at all times (whether in manual or electronic form) to an external intervener or an investigator carrying out a function described in Section 368 of the LPUL, and
- (f) kept up to date as provided by subrule (2).

Rule 95A(2) provides that an entry in a register of information that is required to be recorded in the register of files opened must be made -

- (a) for information known to the law practice at the time a file is opened for the matter - as soon as practicable after the file is opened, or
- (b) for information that becomes known to the law practice after the file is opened - as soon as practicable after the information becomes known.

The register of files opened is designed to provide a history in relation to all matters conducted by a law practice. Practices normally maintain the register by computer, cards or book, and is maintained in numerical and/or alphabetical order.

As instructions are received for a new matter, the matter is allocated the next consecutive reference number and the required particulars are recorded in the register, however maintained. A client matter file is then opened using this reference number. The reference number is quoted on all correspondence issued by the law practice. Wherever possible, the same reference number should be used within the accounting system, with the appropriate trust ledger account, general ledger account or subsidiary ledger account reference added.

A suggested presentation of a register of files opened follows:

<p>Philpott & Associates Register of Files Opened</p>
Client Name: _____
Matter Reference: _____
Address: _____
Matter Description: _____
Date Instructions Received: _____
Location of Regulated Property: _____
Name of Other Party: _____
Responsible Principal: _____
Date File Closed: _____

If a numerical register of files opened is maintained, it may also be appropriate to maintain a register in alphabetical order by family name, to record all matters conducted for each client. The register of files opened may also indicate whether or not wills or other safe custody documents are held for each client.

18.3 Register of Safe Custody Documents

Rule 94 states:

- (1) A law practice must maintain a register of safe custody documents.
- (2) The register of safe custody documents must, in respect of each will, deed, document or other valuable property for which the law practice receives instructions to hold the item in safe custody, record the following:
 - (a) the full name and address of the person who gave the instructions;
 - (b) a short description of the item;
 - (c) the date of receipt of the item by the law practice;
 - (d) the identifier of the safe custody packet, in which the item is held by the law practice.

A Register of Safe Custody Documents is a register of all security documents held by a law practice on behalf of clients. The register should be kept in a secure place. The usual method is to maintain a computer record or a card record for each security packet held. Documents are placed in a large envelope for each client. The envelope is numbered and, as additional documents are added to the envelope, information describing each document is added to the front of the envelope and to the computer record or card record. When documents are released to the client, a signature for receipt should be obtained from the client. Some legal practitioners maintain separate registers for wills and other security documents.

A suggested presentation of a Register of Safe Custody Documents follows.

Philpott & Associates			
Register of Safe Custody Documents			
Client Name	_____		
Packet Number	_____		
Address:	_____		
Documents Held			
Description of Document	Dated	Date Collected	Signature

Rule 95A(1) provides that a register of safe custody documents maintained by a law practice must be –

- (a) in the English language, and
- (b) legible, and
- (c) kept in a single document or in any other manner that enables a single document to be compiled, and
- (d) kept at the premises of the law practice at all times, and
- (e) accessible at all times (whether in manual or electronic form) to an external intervener or an investigator carrying out a function described in Section 368 of the LPUL, and
- (f) kept up to date as provided by subrule (2).

Rule 95A(2) provides that an entry in a register of information that is required to be recorded in the register of safe custody documents must be made -

- (a) for information known to the law practice at the time a file is opened for the matter - as soon as practicable after the file is opened, or
- (b) for information that becomes known to the law practice after the file is opened - as soon as practicable after the information becomes known.

184 Register of Financial Interests

Rule 95 states:

- (1) A law practice must maintain a register of financial interests.
- (2) The register of financial interests must, in respect of each legal practitioner associate of the law practice, record the following:
 - (a) the full name and address of the associate;
 - (b) the name and other identifying particulars of any company, partnership, or other entity, in which

the associate has a financial interest and which engages in any dealing with trust money received by the associate or the law practice, other than:

- (i) companies listed on the Australian Stock Exchange; and
 - (ii) shelf companies (companies that have already been registered but have not traded) maintained for sale.
- (3) A legal practitioner associate of the law practice must cause the details referred to in Subrule 2(b) to be disclosed in the register of financial interests as soon as practicable.

Rule 95A(1) provides that a register of financial interests maintained by a law practice must be-

- (a) in the English language, and
- (b) legible, and
- (c) kept in a single document or in any other manner that enables a single document to be compiled, and
- (d) kept at the premises of the law practice at all times, and
- (e) accessible at all times (whether in manual or electronic form) to an external intervener or an investigator carrying out a function described in Section 368 of the LPUL, and
- (f) kept up to date as provided by subrule (2).

Rule 95A(2) provides that an entry in a register of information that is required to be recorded in the register of financial interests must be made -

- (a) for information known to the law practice at the time a file is opened for the matter - as soon as practicable after the file is opened, or
- (b) for information that becomes known to the law practice after the file is opened - as soon as practicable after the information becomes known.

A suggested format for this register is not included in the Legal Accounting Handbook. The intention of the register is for the law practice to record relevant companies and partnerships or entities in which each legal practitioner associate of the law practice has a financial interest and from which the associate or law practice has received trust money.

18.5 OFFICE REGISTERS

Consideration should be given to maintaining registers/records that will assist in collecting details of costs and recoverable items. Costs for such items as photocopying, facsimiles and STD/IDD telephone calls should be collected for inclusion in bills issued to the client.

18.5.1 Photocopy Register

The objective of maintaining a photocopy register is to record all photocopies made against individual matters. Charges may be subsequently recouped from the client when the matter is billed. There are many forms of a photocopy register from the simple piece of paper through to computer technology known as “Disbursement Recovery Device”, which requires the entry of an account number prior to commencing the photocopying.

All expenses related to the photocopier such as toner, paper and services should be recorded in the accounting system under the photocopying expense account. If a practice adopts the procedure of allowing other persons to use the photocopier at a fee per copy, then the resulting income should be recorded in the accounting system when the receipt is issued.

The most common method of recording photocopies is in an exercise book held in close proximity to the photocopier. Employees are required to record the number of copies, the matter reference, matter description and the date copies were taken. Whether these charges are posted to the individual ledger in the accounting system or simply recorded and subsequently charged to the client, is a matter for each practice. The simplest method is to ensure that entries recorded in the photocopy register are transferred to an “individual matter cost recovery sheet”. This will ensure that charges are not overlooked when a bill is prepared. Some firms use the inside cover of the file to record photocopies and other charges. Each method is acceptable as long as the entries in the photocopy register are transferred to the appropriate individual matter on a regular basis and charged to the client on billing.

A suggested presentation for a photocopy register follows:

Philpott and Associates Photocopy Register				
Date	Matter Reference	Matter Description	Number of Copies	Operator

18.52 Fax Register

A similar register should be maintained to record the cost of transmitting faxes, so that costs can be recouped where applicable.

A suggested presentation for a fax register follows:

Philpott and Associates Facsimile Register				
Date	Matter Reference	Matter Description	Number of Pages	Sent By

Consideration should be given to recording the cost of telephone calls and facsimile transmissions external to the local network, particularly for clients where this expense is regularly incurred.

19. COMMON AREAS OF CONCERN

If legal practitioners are aware of common problem areas associated with the LPUL and LPUGR, many of the difficulties can be easily overcome. Problem areas include:

19.1 Sections 129 / 137 – Trust Money

- (a) Debit balances in trust ledger accounts - normally caused by not posting transactions to the trust ledger accounts;
- (b) Lengthy delays in correcting debit balances in trust ledger accounts - normally caused by a failure to complete month end balancing requirements;
- (c) Late deposits of trust money;
- (d) Drawing against uncleared trust funds;
- (e) Direct deposits not receipted and posted to the trust receipts cash book and trust ledger accounts;
- (f) Old balances in trust ledger accounts;
- (g) Unidentified deposits.

19.2 Section 147 – Keeping of Trust Records

- (a) The need to show the “true position” and for the trust records to be “conveniently and properly examined and investigated” and “regularly maintained”;
- (b) Failure to clear balances for costs from trust ledger accounts and then making payments from these balances for office account items;
- (c) Consideration of storage of records.

19.3 Section 46 Application Act – Statutory Deposit

- (a) The first calculation after commencing practice;
- (b) The calculation when there is more than one general trust account;
- (c) The calculation when there is a declining general trust account balance;
- (d) Communication with the authorised ADI;
- (e) Accounting for increases and reductions in the statutory deposit.

19.4 LPUGR – Compliance

- (a) Insufficient information recorded in the source documents;
- (b) Insufficient information recorded in the trust cash book, trust transfer journal and trust ledger accounts;
- (c) The use of a trust ledger account styled “Suspense Account”;
- (d) The use of a trust ledger account styled “Costs Clearing Account”;
- (e) Monthly reporting requirements;
- (f) Trust trial balance statement out of balance (variance);
- (g) Trust authorised ADI reconciliation statement out of balance (variance).

19.5 Computerised Accounting Systems

- (a) Failure to complete back-up procedures in accordance with system suppliers’ recommendations;
- (b) Failure to test the restore function of the computer system;
- (c) Use of software that does not comply with the LPUGR as to the information to be recorded and the deletion of entries.

19.6 Old Trust Ledger Account Balances

- (a) Failure to review balance of trust ledger account prior to closing a file;
- (b) Failure to reverse stale trust cheques.

20. STATUTORY PROVISIONS

20.1 Legal Profession Uniform Law Application Act 2014

Note Legal Profession Uniform Law

Located at: <https://www.legislation.nsw.gov.au/#/view/act/2014/16/full>

Section 4 of the Act states that the Legal Profession Uniform Law set out in Schedule 1 to the Legal Profession Uniform Law Application Act 2014 (VIC) applies as a law of New South Wales, and as so applying, may be referred to as the Legal Profession Uniform Law (NSW), and so applies as if it were an Act.

The relevant sections relating to statutory deposits may be found in Division 1 of Part 5 of the Act at Sections 46 and 47.

Section 11 of the Act designates the Law Society Council as the designated local regulatory authority for the purposes of the sections of the Legal Profession Uniform Law (NSW) referred to in the Legal Accounting Handbook, unless otherwise stated.

Section 14 of the Act relates to unclaimed money.

20.2 Legal Profession Uniform Law Application Regulation 2015

Located at: <https://legislation.nsw.gov.au/#/view/regulation/2015/330/full>

The relevant clauses relating to statutory deposits may be found in Part 3 of the Regulations.

20.3 Legal Profession Uniform Law (NSW)

Located at: <https://www.legislation.nsw.gov.au/#/view/act/2014/16a/full>

The relevant provisions relating to trust money and trust accounts are contained in Part 4.2 of Chapter 4 of the LPUL at Sections 127 to 168.

Section 6 of the LPUL contains general definitions.

Chapter 7 of the LPUL contains investigatory powers available to investigators conducting a trust account investigation or external examination.

The relevant provisions relating to the appointment of external Investigators are contained in Sections 161 to 166.

The relevant provisions relating to the powers of external investigators are contained in Sections 368 to 390.

The relevant provisions relating to the appointment of external examiners are contained in Sections 155 to 160.

The relevant provisions relating to the powers of external examiners are contained in Sections 368 to 370 and 386 to 390.

20.4 Legal Profession Uniform General Rules 2015

Located at: <https://www.legislation.nsw.gov.au/#/view/regulation/2015/246>

Section 419 of the LPUL gives the Legal Services Council the power to make Legal Profession Uniform Rules. The Rules made by the Council are collectively referred to as the Uniform Rules. The relevant Rules relating to trust money and trust accounts are contained in Part 4.2 of Chapter 4, Rules 33 to 69 of the LPUGR.

The Rules are available on the Legal Services Council's website at www.legalservicescouncil.org.au/legislation

21. WORKED EXAMPLE

The worked example below has been prepared to enable revision of the major areas of trust money and the trust account in respect of the Legal Profession Uniform General Rules 2015 (LPUGR). The transactions are representative of the normal type of transactions processed by a law practice. If assistance is required in regard to any matter relating to trust money transactions or trust records, contact should be made with an officer of the Trust Accounts Department on (02) 9926 0337.

Date	Transaction Particulars	Identification
01.09.17	Received from Mr A J Smith \$2,000 cash as costs and disbursements for matter number S1 Property Purchase 114 West Street, Botany. [Comment 1]	Trust Receipt
01.09.17	Received from Mrs S Chidiac \$1,500, being a Commonwealth Bank cheque, Hurstville branch, for costs, disbursements and barrister's fees on behalf of Peter Chidiac for matter number C1 Shoplifting Charges. [Comment 1]	Trust Receipt
01.09.17	Received from Mr M R Gaynor \$500, being a personal cheque drawn on Commonwealth Bank, Hurstville branch for costs and disbursements relating to matter number G1 Third party v GIO. [Comment 1]	Trust Receipt
01.09.17	Received from M Colebrigg \$2,000, being a company cheque drawn on the account of M A Colebrigg Pty Ltd with National Australia Bank, Hurstville branch for \$1,500 for stamp duty for matter number C2 Purchase of Lot 129 Blackheath Road, Blackheath and \$500 for disbursements for matter number C3 Sale 10 Joseph Street, Lidcombe. [Comment 1]	Trust Receipt
01.09.17	Prepared and deposited the trust receipts processed to date.	Trust Deposit Slip
05.09.17	Received \$15,000 cash from Mr P Chidiac to cover future disbursements. Mr Chidiac's written directions are to deposit the money at call with St George Bank at an interest rate as determined by St George Bank. The practice must complete a Form 15A to report the cash transaction to Austrac. Your secretary advised later that day that the \$15,000 had been deposited with St George Bank account number 0634607 at 4.85% fixed interest rate, at call. Interest is to be credited monthly to the account.	Controlled Money Receipt to be issued Controlled Money Movements Record to be opened Duplicate copy of the receipt to be retained in Controlled Money Register
Comment 1	A bill has not been delivered. The client's instructions do not require the deposit of funds other than to the credit of the general trust account in NSW.	
05.09.17	Received by way of a direct deposit to the trust bank account on 04.09.17 from the Armidale branch of Commonwealth Bank \$15,000, being proceeds of Commonwealth Bank savings account 153-607 in the name of May Smith, for matter number S2 Estate of the late May Smith.	Trust Receipt
05.09.17	Received from A J Smith \$1,000 cash, being proceeds of the auction sale of assets of the Estate of the late May Smith, for matter number S2.	Trust Receipt

Date	Transaction Particulars	Identification
05.09.17	Received from the State Government Superannuation Fund \$160,000 by way of a cheque drawn on the State Super Fund with Commonwealth Bank, Martin Place for proceeds of May Smith's superannuation policy, for matter number S2 Estate of the late May Smith.	Trust Receipt
05.09.17	Received from Max Wright \$5,000 by personal cheque drawn on Westpac Bank, Carlingford branch for proceeds of the late May Smith's motor vehicle, for matter number S2 Estate of the late May Smith.	Trust Receipt
05.09.17	Prepared deposit slip and deposited the trust receipts issued to date.	Trust Deposit Slip
12.09.17	Mr Ryan, a client of 19 Reece Street, Guildford, advised he was departing overseas and gave you his sole written power of attorney dated 10.09.17 to operate his personal bank account at Westpac Bank, Arncliffe branch, 179 Sumner Street, Arncliffe, account number 220-356 until his return. He also provided you with his cheque book for this account. The appropriate authority to operate the account was lodged with the bank. The account has a balance of \$5,000.	Entry in the Powers and Estates Register Power Money Record (record of all dealings)
15.09.17	Mr A J Smith, the Executor of the late May Smith's Estate advised in writing that \$170,000 be drawn from the Estate's trust ledger and be deposited with St George Bank at the market rate of interest at call.	Trust Cheque Controlled Money Receipt Controlled Money Movements Record
15.09.17	Received from Paul Ashby, \$5000 by St George Bank cheque, Hurstville branch for costs, disbursements and stamp duty for matter number A1 Purchase of 15 Homebush Road, Homebush. Your secretary prepared a trust account receipt for this money. However, before issuing same, she realised an error and cancelled the receipt. A valid trust receipt is outstanding.	Cancelled Trust Receipt (all copies of the cancelled receipt should be retained) Trust Receipt
16.09.17	Mr M Colebrigg made a direct deposit of \$15,000 into your general trust account on 14.09.17, being the balance of the stamp duty for matter number C2 Purchase of Blackheath Road, Blackheath.	Trust Receipt
16.09.17	Your secretary advised today that the \$170,000 had been deposited with St George Bank at 4.85% fixed interest rate, at call. The account number is XX25604 in the name of Philpott and Associates Controlled Money Account OBO Smith Estate. Interest is to be credited monthly.	Account particulars must be entered in the duplicate controlled money receipt Open Controlled Money Movements Record
16.09.17	Received \$10,000 from AGC Insurance Ltd by way of company cheque drawn on ANZ Bank, Blakehurst branch for proceeds of life insurance policy on the late May Smith.	Trust Receipt
17.09.17	Prepared trust deposit slip and deposited the receipts for 15.09.17 and 16.09.17 (Receipts 10 and 11).	Trust Deposit Slip
18.09.17	Received \$1,000 cash from Mr T Fahey for costs and disbursements for matter number F2 Sale of 16 Bankstown Street, Bankstown. [Comment 1] The transaction was credited (in error) to the trust ledger account for matter number F4 Fehon Sale of Piccadilly Court.	Trust Receipt

Date	Transaction Particulars	Identification
18.09.17	Received \$1,000 from Mrs K Forster by Commonwealth Bank cheque, Hurstville branch on behalf of Mr A J Forster as costs and disbursements for matter number F1 Sale to Wehbe. [Comment 1]	Trust Receipt
18.09.17	Received \$1,000 cash from Mr C Fahey for costs and disbursements for matter number F2 Sale of 16 Bankstown St, Bankstown. [Comment 1]	Trust Receipt
18.09.17	Prepared deposit slip and deposited the receipts issued.	Trust Deposit Slip
20.09.17	Paid Pink Pest Pty Ltd \$150 for inspection report relating to matter number A1 Ashby Purchase of 114 Homebush Road.	Trust Cheque
	Paid Supreme Court \$220 for filing fees relating to matter number G1 Third party GIO, Client Gaynor.	Trust Cheque
	Paid Dr Huskey \$250 for medical report relating to matter number G1 Third party GIO.	Trust Cheque
	Paid to Philpott and Associates office account in one cheque \$500 for costs re matter number C4 Cahill Sale to Wenzell and \$600 for costs re matter number F1 Forster Sale to Wehbe. A bill of costs had been sent to both clients and the clients have approved the transfer.	Trust Cheque (multi)
21.09.17	Mr Cahill directed that the balance of his sale account be transferred to his purchase account, for costs and disbursements re matter number C5 Purchase from Cutcliff, 16 Castle Hill Road.	Trust Transfer Journal
21.09.17	Received a bank cheque from R Dunlop made payable to Revenue NSW for payment of Duty on his purchase of 15 Landsdown Street, Liverpool. The cheque was in response to our letter requesting same and advising such payment would be made on 25.09.17.	Transit Money. If not paid on 25.09.17 then prescribed period has elapsed and new instructions required as soon as practicable
21.09.17	Mr Smith directed that a further \$10,000 be withdrawn by electronic funds transfer from the trust ledger account relating to matter number S2 for the Estate of May Smith and be deposited with St George Bank. Your secretary confirms that this has been effected today.	Electronic Funds Transfer (General Trust Account) Controlled Money Receipt
21.09.17	Mr Forster, on receiving his receipt, advised that the receipt should have been \$600 for his sale matter numbered F1 and the balance related to his purchase matter, F3 Purchase of Swing St, Penrith.	Trust Transfer Journal
25.09.17	Received \$1,500 from R Dunlop in response to a bill forwarded to him on 30.08.17 re matter number D1 Purchase of 15 Landsdown Street, Liverpool.	Office Receipt
26.09.17	Your bank advised that the cheque received on 5.09.17 from Mr Wright for the purchase of motor vehicle was not met on presentation and has been dishonoured.	Trust Receipt reversal
	Dr Huskey returned the cheque drawn for \$250 with advice that the amount should have been \$25. The cheque was cancelled and a new cheque issued.	Trust Cheque Cancelled Before cancelling a cheque the law practice must be in possession of the original cheque or place a stop payment on the cheque Trust cheque

Date	Transaction Particulars	Identification
27.09.17	Mr Max Wright paid \$5,000 cash to replace his dishonoured cheque.	Trust Receipt
	Prepared trust deposit slip and deposited the trust money.	Trust Deposit Slip
28.09.17	Mr A J Smith advised that he has made a deposit of \$5,000 on 26.09.17 into the controlled money account of the Estate of May Smith (Matter Ref: S2), being realisation from the sale of an asset.	Controlled Money Receipt
	A letter advising of the intended first and final distribution together with a bill for \$1,000 was forwarded to A J Smith, the executor of the Estate of May Smith.	
29.09.17	Mr Smith approved the distribution of the estate (in writing) as follows:	Controlled Money Cheque
	From controlled money a/c:	Electronic Funds Transfer (Controlled Money)
	Mr T Heffron \$92,575 by EFT.	
	Telegraphic transfer of the above amount to the credit of Mr T Heffron's account number 123-456 with C'with Bank, Tamworth (BSB number 062-100).	
	Mrs J Heffron \$92,575 by cheque.	
	The additional \$150 is interest that was advised by St George on closure of the account.	
	From general trust account:	Trust Cheque
	Mr Smith approved the bill sent on 28.09.17 in writing which was transferred by cheque from the general trust account.	
	Mr Smith directs that the remaining trust funds are to be electronically transferred to the credit of Mr A Heffron's account number 163-705 with Commonwealth Bank, Armidale.	Electronic Funds Transfer (General Trust Account)
	This matter is now considered closed.	Trust Account Statements –for General Trust and Controlled Money
29.09.17	Mr Chidiac requested a trust cheque be drawn from the general trust account for the balance of his matter number C1 Shoplifting Charges, such cheque to be made payable to cash, as he does not have a bank account.	Not possible Refer to Rule 43(1)(a)
30.09.17	Mr T Ryan advised by telephone (as he is overseas) that his family in Australia have received an invoice from his medical centre (The Medical Professionals) for the amount of \$200. He has arranged for the invoice to be faxed to your office and directs that upon receipt of the invoice, you may pay the invoice from his personal bank account.	Power Money Record (record of all dealings)
	You have made a file note of the conversation and draw a cheque payable to "The Medical Professionals" when the invoice arrives at your office.	
30.09.17	Received \$1500 by St George Bank cheque drawn on the Hurstville branch from S Pont for future disbursements relating to matter number P1 Sale of 16 Greystanes Rd, Greystanes. [Comment 1]	Trust Receipt

Date	Transaction Particulars	Identification
30.09.17	A review of the trust ledger account posting indicates that the receipt made out to Mr Fahey on 18.09.17 had been posted to the wrong account. It had been posted to the trust ledger account for matter number F4 Fehon Sale of Piccadilly Court rather than the trust ledger account for matter number F2 Fahey Sale of 16 Bankstown St, Bankstown.	Trust Transfer Journal Written authorisation (Rule 46(1)(a))
30.09.17	Trust cheque number 607 is cancelled, prior to issue.	Cancelled trust cheque
30.09.17	Mr M Colebrigg directs you to stamp the contract for matter number C2 Purchase of Blackheath Road, Blackheath. The stamp duty for the contract is \$16,500. You draw a cheque payable to your bank to obtain a bank cheque payable to Revenue NSW.	Trust Cheque
01.10.17	Received GIO cheque for \$16,000 from Foskett and Foskett, solicitors as settlement funds for matter number G1 Third party GIO.	Trust Receipt - to be recorded in October receipts cash book
01.10.17	Prepared trust deposit slip and deposited the trust receipts for 30.09.17.	Deposit Slip
01.10.17	Received bank cheque for \$150,000 from Smith and Jones, solicitors as settlement proceeds for matter number P1 Sale of 16 Greystanes Road, Greystanes.	Trust Receipt
01.10.17	Received a bank cheque for \$1,500 payable to Philpott and Associates law practice trust account with no remittance details or accompanying documentation.	Should be accepted into trust ledger account headed "Client to be identified". After identification, Trust Transfer Journal, or funds paid to unclaimed money if not identified.
05.10.17	Trust authorised ADI statement as attached was received from the authorised ADI.	Trust Authorised ADI Reconciliation Statement Trust Trial Balance Statement
07.10.17	Received a trust account cheque from Foskett and Foskett made payable to Philpott and Associates Law Practice Trust Account as settlement proceeds for matter number F2 Sale of 16 Bankstown St, Bankstown. The client instructs that, as the long weekend is approaching, he wants the cheque paid directly to him and the cheque is not to be deposited into the general trust account. Can this be done? What should the law practice ensure is retained?	Yes, if client directs, a cheque can be endorsed, but subject to the authorised ADI accepting the endorsement The direction must be in writing and a "receipt" (letterhead only) be obtained for receipt of the cheque by the client The written direction and a copy of the endorsed cheque must be kept as part of the trust records
08.10.17	Practitioner is advised that he/she will be required to attend the Melbourne Supreme Court for 2 weeks. The practitioner decides to delegate in writing the authority to sign trust cheques and controlled money withdrawal forms to the legal secretary (non-legal practitioner) who has been employed by the law practice for the past 16 years. Is this course of action satisfactory?	No, the delegation must be to two associates as the secretary is not a legal practitioner. See Chapter 7 of the Legal Accounting Handbook

**Philpott and Associates
Client Register**

Client Name	Address	Will Held	Security Documents Packet #
Ashby Paul	16 Ashley Drive, West Pennant Hills 2210	Y	N
Arlott Ken	6 Smith St, Smithville 2164	N	N
Chidiac Peter	16 Oaks Drive, Merrylands 2160	N	N
Colebrigg Maurice	16 John Street, Smithfield 2164	Y	X3152
Cahill John	16 Old Northern Road, Castle Hill 2154	Y	N
Carrol Sean	11 Dunlop Street, Dubbo 2830	N	N
Dunlop Ron	16 Bronte Rd, Bronte 2024	Y	X3153
Forster Alan James	16 Beard Street, Castle Hill 2154	N	N
Fahey Terry	16 Redfern Street, Redfern 2016	Y	X3154
Fehon Peter John	21 Merrylands Road, Merrylands 2160	N	N
Gaynor Michael	21 Ricketts Road, Merrylands 2160	Y	N
Gillett Warren	1 Key Street, Birdsville 4482	Y	N
Pont Stephen	21 Balgowlah Road, Mosman 2088	N	N
Ryan Tim	19 Reece Street, Guildford 2161	Y	X3155
Smith Arthur Jack	21 Belmore Road, Canterbury 2193	N	N
Speaking Charles	11 Yap Yap Road, Talktown 2900	N	N

**Philpott and Associates
Register of Files Opened**

Index	Client/ Person Name	Client/ Person Address	Matter Description	Date Instructions Received	File Matter Ref	Location of Regulated Property	Trust Matter Ref	Other Party	Responsible Principal	Date File Closed
A	Ashby, Paul	16 Ashley Drive, West Pennant Hills 2210	Purchase 15 Homebush Road, Homebush	15.09.17	17/A1	Philpott & Associates 8/170 Phillip St, Sydney	A1	Slee, Robert and Julie	Walsh	
	Arlott, Ken	6 Smith St, Smithville 2164	Assault Police	16.09.17	17/A2	Philpott & Associates 8/170 Phillip St, Sydney		NSW Police	Walsh	
C	Chidiac, Peter	16 Oaks Drive, Merrylands 2160	Shoplifting Charges	01.09.17	17/C1	Philpott & Associates 8/170 Phillip St, Sydney	C1	NSW Police	Walsh	
	Colebrigg, Maurice	16 John Street Smithfield 2164	Purchase 129 Blackheath Road, Blackheath	01.09.17	17/C2	Philpott & Associates 8/170 Phillip St, Sydney	C2	Mr & Mrs Spring	Walsh	
	Colebrigg, Maurice	16 John Street Smithfield 2164	Sale 10 Joseph Street, Lidcombe	01.09.17	17/C3	Philpott & Associates 8/170 Phillip St, Sydney	C3	Mr and Mrs Johnstone	Walsh	
	Cahill, John	16 Old Northern Road, Castle Hill 2154	Sale to Wenzell	18.09.17	17/C4	Philpott & Associates 8/170 Phillip St, Sydney	C4	John Wenzell	Walsh	

Index	Client/ Person Name	Client/ Person Address	Matter Description	Date Instructions Received	File Matter Ref	Location of Regulated Property	Trust Matter Ref	Other Party	Responsible Principal	Date File Closed
C	Cahill, John	16 Old Northern Road, Castle Hill 2154	Purchase from Cutcliff	21.09.17	17/C5	Philpott & Associates 8/170 Phillip St, Sydney	C5	Mr and Mrs Spicer	Walsh	
	Carrol, Sean	11 Dunlop Street, Dubbo 2830	Assault Police	21.09.17	17/C6	Philpott & Associates 8/170 Phillip St, Sydney		NSW Police	Walsh	
D	Dunlop, Ron	16 Bronte Rd, Bronte 2024	Purchase 15 Landsdown Street, Liverpool	21.09.17	17/D1	Philpott & Associates 8/170 Phillip St, Sydney	D1	Mr Jones	Walsh	
F	Forster, Alan James	16 Beard Street, Castle Hill 2154	Sale to Wehbe	18.09.17	17/F1	Philpott & Associates 8/170 Phillip St, Sydney	F1	Mr and Mrs A Wehbe	Walsh	
	Fahey, Terry	16 Redfern Street, Redfern 2016	Sale 16 Bankstown Street, Bankstown	18.09.17	17/F2	Philpott & Associates 8/170 Phillip St, Sydney	F2	Mr and Mrs A Smith	Walsh	
	Forster, Alan James	16 Beard Street, Castle Hill 2154	Purchase Swing St, Penrith	18.09.17	17/F3	Philpott & Associates 8/170 Phillip St, Sydney	F3	Penrith Leagues Club	Walsh	
	Fehon, Peter John	21 Merrylands Road, Merrylands 2160	Sale Piccadilly Court	18.09.17	17/F4	Philpott & Associates 8/170 Phillip St, Sydney	F4	Windsor Holdings	Walsh	
G	Gaynor, Michael	21 Ricketts Road, Merrylands 2160	Third Party - GIO	01.09.17	17/G1	Philpott & Associates 8/170 Phillip St, Sydney	G1	GIO	Walsh	
	Gillett, Warren	1 Key Street, Birdsville 4482	Defamation ats Mitchell	21.09.17	17/G2	Philpott & Associates 8/170 Phillip St, Sydney		Mitchell	Walsh	

Index	Client/ Person Name	Client/ Person Address	Matter Description	Date Instructions Received	File Matter Ref	Location of Regulated Property	Trust Matter Ref	Other Party	Responsible Principal	Date File Closed
P	Pont, Stephen	21 Balgowlah Road, Mosman 2088	Sale 16 Greystanes Road, Greystanes	30.09.17	17/P1	Philpott & Associates 8/170 Phillip St, Sydney	P1	Mr Turtle	Walsh	
R	Ryan, Tim	19 Reece Street, Guildford 2161	Power of Attorney - Affairs	10.09.17	17/R1	Philpott & Associates 8/170 Phillip St, Sydney	R1 Power Money	N/A	Walsh	
S	Smith, Arthur Jack	21 Belmore Road, Canterbury 2193	Property Purchase 114 West St, Botany	01.09.17	17/S1	Philpott & Associates 8/170 Phillip St, Sydney	S1	Mr Wilson	Walsh	
	Smith, Arthur Jack	21 Belmore Road, Canterbury 2193	Estate late May Smith	05.09.17	17/S2	Philpott & Associates 8/170 Phillip St, Sydney	S2	N/A	Walsh	30.09.17
	Speaking, Charles	11 Yap Yap Road, Talktown 2900	Larceny	21.09.17	17/S3	Philpott & Associates 8/170 Phillip St, Sydney		NSW Police	Walsh	

Note: In the matters of Arlott (17/A2), Carrol (17/C6), Gillett (17/G2) and Speaking (17/S3) there are no trust transactions and hence no trust matter references. It will be observed that by utilising a register of files opened a common identification of files, trust ledgers and matters will facilitate filing, storage of records, client reference, bill numbering, and the filing of deleted trust and general ledgers. The register may be expanded to also incorporate wills registers, security packets, deeds and responsible solicitor, dependent on the size and nature of the practice.

**PHILPOTT & ASSOCIATES
TRUST ACCOUNT RECEIPT**

Receipt Number: **1**

Date: **01.09.17** Date Received (if different):

Received from: **Mr A J Smith**

The sum of: **Two thousand** dollars and cents.

\$2,000.00

Cash

For and on behalf of:

Matter Ref.	Account Name	Matter Description
S1	Smith	Property Purchase – 114 West St, Botany

Reason: **Costs and disbursements**

Made out by: **Sean Spinak**

On behalf of Philpott and Associates

Note: Refer to Rule 36 for details to be included in the receipt

**PHILPOTT & ASSOCIATES
TRUST ACCOUNT RECEIPT**

Receipt Number: 2

Date: **01.09.17** Date Received: (if different):

Received from: **Mrs S Chidiac**

The sum of: **One thousand five hundred** dollars and cents

\$ 1,500.00

Cheque

For and on behalf of:

Matter Ref.	Account Name	Matter Description
C1	Chidiac	Shoplifting Charges

Reason: **Costs, disbursements and barristers fees**

Made out by: **Sean Spinak**

On behalf of Philpott and Associates

OR

**PHILPOTT & ASSOCIATES
TRUST ACCOUNT RECEIPT**

Receipt Number: **4**

Date: **01.09.17** Date Received (if different):

Received from: **M Colebrigg**

The sum of: **Two thousand** dollars and cents.

\$ 2,000.00 **Cheque**

For and on behalf of: **See Attached List***

Matter Ref.	Account Name	Matter Description
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Reason: **See Attached list***

Made out by: **John Northey**

On behalf of Philpott and Associates

* **Attached List to show:** 1. Matter Reference 2. Account Name
3. Matter Description 4. Reason for each account

**PHILPOTT & ASSOCIATES
TRUST ACCOUNT RECEIPT**

Receipt Number: **5**

Date: **05.09.17** Date Received (if different) **04.09.17**

Received from: **Commonwealth Bank**

The sum of: **Fifteen thousand** dollars and cents.

\$ 15,000.00 **Direct Deposit**

For and on behalf of:

Matter Ref.	Account Name	Matter Description
S2	Smith	Estate late May Smith

Reason: **Proceeds of bank account numbered 153607**

Made out by: **John Northey**

On behalf of Philpott and Associates

Note: Examples of trust account receipts Nos. 6 to 17, inclusive, are not included in the Legal Accounting Handbook. However, the details of each such receipt are recorded in the Trust Account Receipts Cash Book and each relevant trust ledger account.



Customers note: Before depositing, please remove metal staples and pins from cheques

Drawer	Bank	Branch or BSB number	Amount
1 Commonwealth Bank	Comm	Hurstville	1500 00
2 M R Gaynor	✓	✓	500 00
3 M A Colebrigg Pty Ltd	Nat	✓	2000 00
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Deposit date 01/09/17	CSC/Teller – initials	Cash breakup	Total Cheques
		\$100 \$ 00	
		\$50 \$ 00	\$ 4000 00
Trading date		\$20 \$ 00	
		\$10 \$ 00	Total cash
		\$5 \$ 00	\$ 2000 00
Account name Phillpott and Associates Law Practice		Coin \$	
Trust Account		Total \$	Total to Credit Summary
		Change \$	\$ 6000 00
BSB number 032-002	Account number 941-9404	Total Cash \$	

Cheques in this deposit are not available until cleared.

98-028 (3/07)



National Australia Bank Limited
 ABN 12 004 044 937

Credit Listing

Customers note: Before depositing, please remove metal staples and pins from cheques

Drawer	Bank	Branch or BSB number	Amount
1 State Super Fund	Comm	Martin Place	160000 00
2 Max Wright	Westpac	Carlingford	5000 00
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Deposit date 05/09/17	CSO/teller - initials	Cash breakup	Total Cheques
		\$100 \$ 00	
		\$50 \$ 00	\$ 165000 00
Trading date		\$20 \$ 00	Total cash
		\$10 \$ 00	
Account name Phillpott and Associates Law Practice Trust Account		\$5 \$ 00	\$ 1000 00
		Coin \$	
		Total \$	Total to Credit Summary
BSB number 032-002	Account number 941-9404	Change \$	\$ 166000 00
		Total Cash \$	

Cheques in this deposit are not available until cleared.
 98-028 (5/05)

Trust Cheque Butts

15.09.17
St George Bank Ltd -----
Smith-----
S2 Estate Smith-----
Investment of
Estate funds as -----
directed -----

\$170,000.00
857600

20.09.17
Pink Pests -----
Ashby -----
A1 Purchase -----
Inspection Report

\$150.00
857601

20.09.17
Philpott and Assoc
Trf costs as per trf
Book - Various a/cs

\$1,100.00
857604

30.09.17
NAB B/C IFO Revenue NSW
Colebrigg -----
C2 Purchase -----
Stamp Duty -----

\$16,500.00
857608

Notes:

1. Refer to Rule 43(4) for the required details to be recorded on the cheque butt.
2. Examples of trust account cheque butts Nos. 857602, 857603, 857605 and 857606 are not included in the Legal Accounting Handbook. However, the details of each such cheque are recorded in the Trust Account Payments Cash Book and each relevant trust ledger account.

**Philpott and Associates
Trust Receipts Cash Book**

For Period 01/09/17 to 30/09/17

Page 1

Date Rct/ Date Rec'd (If different)	Rec No. Form	Received From Reason	Account Name Matter Reference (Note 2) Matter Description	Multi Amt.	Rec Amt.	Amount Deposited
01.09.17	1 Cash	Mr A J Smith Costs and Disbursements	SMITH S1 Property Purchase 14 West St, Botany		2,000.00	
01.09.17	2 Cheque	Mrs S Chidiac Costs, disb, Barrister fees	CHIDIAC P C1 Shoplifting Charges		1,500.00	
01.09.17	3 Cheque	Mr M R Gaynor Costs & disbs.	GAYNOR G1 Third Party - G.I.O.		500.00	
01.09.17	4 Cheque	M Colebrigg Stamp duty Disbursements	COLEBRIGG C2 Purchase 129 Blackheath Rd, Blackheath C3 Sale 10 Joseph St, Lidcombe	1,500.00 500.00	2,000.00	6,000.00
05.09.17 04.09.17	5 T/T	Commonwealth Bank Proceeds of a/c 153607	SMITH S2 Est. late May Smith		15,000.00	15,000.00
05.09.17	6 Cash	A J Smith Auction of est. property	SMITH S2 Est. late May Smith		1,000.00	
05.09.17	7 Cheque	State Gov Super Fund Proceeds of Super Fund	SMITH S2 Est. late May Smith		160,000.00	
05.09.17	8 Cheque	Max Wright Proceeds Sale of M/V	SMITH S2 Est. late May Smith		5,000.00	166,000.00
15.09.17	9	Cancelled	Error			
15.09.17	10 Cheque	Paul Ashby Cost, Disb & Stamp duty	ASHBY A1 Purchase 15 Homebush Rd, Homebush		5,000.00	
16.09.17	11 Cheque	A.G.C. Insurance Ltd Proceeds of life policy	SMITH S2 Estate late May Smith		10,000.00	
16.09.17 14.09.17	12 Direct Deposit	M Colebrigg Stamp duty	COLEBRIGG C2 Purchase 129 Blackheath Rd, Blackheath		15,000.00	15,000.00
17.09.17	Note 3	Deposit of Receipts 10 and 11				15,000.00
18.09.17	13 Cheque	J Cahill Costs & disbs.	CAHILL C4 Sale to Wenzell		2,000.00	
18.09.17	14 Cheque	Mrs K Forster Costs & disbs.	FORSTER F1 Sale to Wehbe		1,000.00	
18.09.17	15 Cash	Mr T Fahey Costs & disbs.	FAHEY F2 Sale 16 Bankstown St, Bankstown		1,000.00	4,000.00
26.09.17	8	Max Wright Cheque dishonoured	SMITH S2 Est. late May Smith		(5,000.00)	(5,000.00)
27.09.17	16 Cash	Max Wright Replace disb sale M/V	SMITH S2 Est. late May Smith		5,000.00	5,000.00

Date Rct/ Date Rec'd (If different)	Rec No. Form	Received From Reason	Account Name Matter Reference (Note 2) Matter Description	Multi Amt.	Rec Amt.	Amount Deposited
30.09.17	17 Cheque	S Pont Disbs.	PONT P1 Sale 16 Greystanes Rd, Greystanes		1,500.00	
			Total Receipts		222,500.00	

Refer to Rule 44 for the required details to be recorded in the Trust Receipts Cash Book.

Note 1: The column headed Date Rct/ Date Rec'd is used to record the date the receipt is made out and, if different, the date of the receipt of the money.

Note 2: If the law practice uses a trust ledger account reference that is different to the matter reference, an additional column would be included disclosing the trust ledger account reference number.

Note 3: If the date of the deposit is different to the receipt date, the date of the deposit should be recorded in a separate line against the amount deposited.

**Philpott and Associates
Trust Payments Cash Book**

For Period 01/09/17 to 30/09/17

Page 1

Date	Chq/EFT Number	Paid To Reason	Account Name Matter Reference Matter Description	Multi Amount	Payment Amount
15.09.17	857600	St George Bank Invest Estate Funds	SMITH S2 Estate late May Smith		170,000.00
20.09.17	601	Pink Pests Inspection Report	ASHBY A1 Purchase 114 Homebush Rd		150.00
20.09.17	602	Supreme Court Filing Fees	GAYNOR G1 Third Party - G.I.O.		220.00
20.09.17	603	Dr Huskey Medical Report	GAYNOR G1 Third Party - G.I.O.		250.00
20.09.17	604	Philpott and Associates Costs as per bill Costs as per bill	CAHILL C4 Cahill Sale to Wenzell F1 Sale to Wehbe	500.00 600.00	1,100.00
21.09.17	EFT01	Philpott & Associates Controlled Money Account Smith Estate XXX-XXX-XX25604 Additional Invest Est. Funds	SMITH S2 Estate late May Smith		10,000.00
26.09.17	603	Dr Huskey Cheque Cancelled	GAYNOR G1 Third party - G.I.O		(250.00)
26.06.17	605	Dr Huskey Replace Chq 603 - Med. Rep.	GAYNOR G1 Third party - G.I.O.		25.00
29.09.17	EFT02	A Heffron XXX-XXX-163-705 Final Distribution of Estate	SMITH S2 Estate late May Smith		10,000.00
29.09.17	606	Philpott and Associates Costs as per Bill	SMITH S2 Estate late May Smith		1,000.00
30.09.17	607	Cancelled – Incorrect entry			
30.09.17	608	NAB IFO Revenue NSW [Notes 2 & 3] Stamp duty	COLEBRIGG C2 Purchase 129 Blackheath Rd, Blackheath		16,500.00
				Total Payments	208,995.00

CASH BOOK SUMMARY

Opening Balance 0.00
 Add receipts - September 222,500.00
 Less payments - September 208,995.00
 Closing Cash Book balance 13,505.00

Note 1: Refer to Rule 45 for the required details to be shown in the general trust account payments cash book.

Note 2: If a trust cheque is made payable to an ADI, Rule 45(1)(c) requires the trust account payments cash book to record the name or BSB number of the ADI and the name of the person receiving the benefit of the payment. In other words, if a cheque is drawn to, say, NAB to obtain a bank cheque, the law practice must also record the name of the person receiving the benefit of the payment in the payments cash book.

Note 3: IFO = In Favour Of

**Philpott and Associates
Trust Transfer Journal**

For Period 01.09.17 to 30.09.17

Page 1

Date	Jnl Ref	Account Name Matter Ref. Matter Description (Reason)	Debit Amount	Credit Amount	Authorised By
21.09.17	1	CAHILL C4 Sale to Wenzell CAHILL C5 Purchase from Cutcliff (Transfer as directed by client to cover costs and disbursements)	1,500.00	1,500.00	<i>S Walsh</i> [Note 2]
21.09.17	2	FORSTER F1 Sale to Wehbe FORSTER F3 Purchase Swing Street (Entry to correct incorrect recording of receipt No. 14, as per client's instructions)	400.00	400.00	<i>S Walsh</i> [Note 2]
30.09.17	3	FEHON F4 Sale Piccadilly Court FAHEY F2 Sale 16 Bankstown Street (Entry to correct incorrect posting of receipt No. 15)	1,000.00	1,000.00	<i>S Walsh</i> [Note 2]

Note 1: Refer to Rule 46 for the required details to be shown in the journal.

Note 2: Rule 46(1)(a) requires all trust transfer journals to be authorised in writing by a principal or authorised associate(s) and Rule 46(5) requires the particulars of the authorisation to be recorded. As this worked example is based on a manual system, the accounts and support staff may record the trust transfer journal, and ask the principal (or authorised associates(s)) to sign beside the journal, before it is recorded in the respective trust ledger account.

Note 3: In situations where the law practice uses a computerised accounting system, the above method will not be applicable as the recording of a journal entry would be immediately recorded in the trust ledger accounts. Therefore, a trust transfer journal authorisation form should be completed before the journal can be recorded in the system.

Philpott and Associates
Trust Account Ledgers

ACCOUNT NAME Ashby Paul
ADDRESS 16 Ashley Drive
West Pennant Hills NSW 2210

MATTER REF. **A1** MATTER DESCRIPTION Purchase 15 Homebush Rd,
Homebush
OTHER PARTY Snee, Robert and Julie

RESPONSIBLE PRACTITIONER Napper RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
15.09.17	R10	Paul Ashby Costs, disbs. & barristers fees		5,000.00	5,000.00
20.09.17 Note 1	P601	Pink Pests Inspection Report	150.00		4,850.00

Refer to Rule 47 for the required details to be recorded in the trust ledger account.

Note 1: The column headed Date Rct/Rec'd/Paid is used to record the date that the receipt was made out and, if different, the date the money was received, and the date of the cheque, electronic funds transfer or journal transfer.

ACCOUNT NAME CHIDIAC Peter
ADDRESS 16 Oaks Drive
Merrylands 2160

MATTER REF. **C1** MATTER DESCRIPTION Shoplifting Charges
OTHER PARTY

RESPONSIBLE PRACTITIONER Napper RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
01.09.17	R2	Mrs S Chidiac Costs, disbs & barristers fees		1,500.00	1,500.00

ACCOUNT NAME COLEBRIGG Maurice
ADDRESS 16 John Street
Smithfield 2164

MATTER REF. **C2** MATTER DESCRIPTION Purchase
129 Blackheath Rd, Blackheath
OTHER PARTY Mr and Mrs Spring

RESPONSIBLE PRACTITIONER Napper RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
01.09.17	R4	M Colebrigg Stamp Duty		1,500.00	1,500.00
16.09.17 14.09.17 [Note 1]	R12	M Colebrigg Stamp Duty		15,000.00	16,500.00
30.09.17	P608	NAB IFO Revenue NSW Stamp Duty	16,500.00		0.00

Note 1: 16.09.17 represents the date the receipt was made out and 14.09.17 represents the date of the actual receipt of the money in the general trust account.

ACCOUNT NAME COLEBRIGG Maurice
ADDRESS 16 John Street
Smithfield 2164

MATTER REF. **C3** MATTER DESCRIPTION Sale
10 Joseph St, Lidcombe
OTHER PARTY Mr and Mrs Johnstone

RESPONSIBLE PRACTITIONER Napper RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
01.09.17	R4	M Colebrigg Disbursements		500.00	500.00

ACCOUNT NAME
ADDRESS

CAHILL John
16 Old Northern Rd
Castle Hill 2154

MATTER REF. **C4**

MATTER DESCRIPTION

Sale to Wenzell

OTHER PARTY

John Wenzell

RESPONSIBLE PRACTITIONER

Napper

RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
18.09.17	R13	J Cahill Costs and Disbursements		2,000.00	2,000.00
20.09.17	P604	Philpott and Associates Costs as per bill	500.00		1,500.00
21.09.17	J1	Cahill C5 Purchase from Cutcliff To cover cost and disbursements	1,500.00		0.00

ACCOUNT NAME
ADDRESS

CAHILL John
16 Old Northern Rd
Castle Hill 2154

MATTER REF. **C5**

MATTER DESCRIPTION

Purchase from Cutcliff

OTHER PARTY

Mr and Mrs Spicer

RESPONSIBLE PRACTITIONER

Napper

RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
21.09.17	J1	Cahill C4 Sale to Wenzell To cover costs and disbursements		1,500.00	1,500.00

ACCOUNT NAME FORSTER Alan James
ADDRESS 16 Beard St
Castle Hill 2154

MATTER REF. **F1** MATTER DESCRIPTION Sale to Wehbe
OTHER PARTY Mr and Mrs A Wehbe

RESPONSIBLE PRACTITIONER Napper RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
18.09.17	R14	Mrs Forster Costs and Disbursements		1,000.00	1,000.00
20.09.17	P604	Philpott and Associates Costs as per bill	600.00		400.00
21.09.17	J2	Forster F3 Purchase Swing St Penrith To correct original receipt entry	400.00		0.00

ACCOUNT NAME FAHEY Terry
ADDRESS 16 Redfern Street
Redfern 2016

MATTER REF. **F2** MATTER DESCRIPTION Sale 16 Bankstown St,
Bankstown
OTHER PARTY Mr and Mrs A Smith

RESPONSIBLE PRACTITIONER Napper RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
30.09.17 18.09.17	J3	Fehon F4 Sale Piccadilly Court To correct incorrect posting of Rec 15		1,000.00	1,000.00

ACCOUNT NAME SMITH Arthur Jack
 ADDRESS 21 Belmore Rd
 CANTERBURY 2193

MATTER REF. **S2** MATTER DESCRIPTION Estate late May Smith
 OTHER PARTY

RESPONSIBLE PRACTITIONER Napper RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
05.09.17 04.09.17	R5	Commonwealth Bank Proceeds of bank a/c 153-607		15,000.00	15,000.00
05.09.17	R6	A.J. Smith Proceeds of Auction of Estate Prop		1,000.00	16,000.00
05.09.17	R7	State Government Superannuation Fund Proceeds of Superannuation policy		160,000.00	176,000.00
05.09.17	R8	Max Wright Proceeds sale of Late May Smith's M/V		5,000.00	181,000.00
15.09.17	P600	St George Bank Investment of Estate funds	170,000.00		11,000.00
16.09.17	R11	A.G.C. Insurances Limited Proceeds of Life policy		10,000.00	21,000.00
21.09.17	EFT01	Philpott & Associates Controlled Money Account OBO Smith Estate XXX-XXX-XX25604 Additional Investment est. funds	10,000.00		11,000.00
26.09.17	R8	Max Wright Receipt cancelled - dishonoured chq	5,000.00		6,000.00
27.09.17	R16	Max Wright Funds to replace dishonoured cheque		5,000.00	11,000.00
29.09.17	EFT02	A Heffron XXX-XXX-163-705 Final distribution of estate	10,000.00		1,000.00
29.09.17	P606	Philpott and Associates Costs as per bill	1,000.00		0.00

ACCOUNT NAME PONT Steven
 ADDRESS 21 Balgowlah Rd
 MOSMAN 2088

MATTER REF. **P1** MATTER DESCRIPTION Sale 16 Greystanes Rd,
 Greystanes
 OTHER PARTY Mr Turtle

RESPONSIBLE PRACTITIONER Napper RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
30.09.17	R17	S Pont Disbursements		1,500.00	1,500.00

Philpott and Associates
Trust Trial Balance Statement as at 30.09.17

Matter Reference	Account Name	Matter Description	Amount
A1	Ashby	Purchase 15 Homebush Rd	4,850.00
C1	Chidiac	Shoplifting Charges	1,500.00
C3	Colebrigg	Sale 10 Joseph St, Lidcombe	500.00
C5	Cahill	Purchase from Cutcliff	1,500.00
F2	Fahey	Sale 16 Bankstown St, Bankstown	1,000.00
F3	Forster	Purchase Swing St, Penrith	400.00
G1	Gaynor	Third party - G.I.O.	255.00
S1	Smith	Property Purchase 114 West St, Botany	2,000.00
P1	Pont	Sale 16 Greystanes Rd, Greystanes	<u>1,500.00</u>
			<u>13,505.00</u>

Rule 48(2)(b)(i) Comparison

Total Client Ledger accounts	13,505.00
Statutory deposit	-
	13,505.00
Reconciled Cash Book balance	13,505.00
Variance (Should be Nil)	NIL

Prepared By: Sean Spinak on 5/10/17

Note: Refer to Rule 48(2)(b), 48(3) and 48(4) for the required details to be recorded for trust trial balance statements.

Philpott and Associates
Trust Authorised ADI Reconciliation Statement
As at Month-end 30.09.17

Balance as per trust authorised ADI statement 30.09.17	12,230.00						
ADD Outstanding deposits	1,500.00						
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Date</u></th> <th style="text-align: left;"><u>Amount</u></th> </tr> </thead> <tbody> <tr> <td>30.09.17</td> <td>1,500.00</td> </tr> </tbody> </table>	<u>Date</u>	<u>Amount</u>	30.09.17	1,500.00			
<u>Date</u>	<u>Amount</u>						
30.09.17	1,500.00						
ADD Authorised ADI Charges incorrectly debited	10.00						
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Date</u></th> <th style="text-align: left;"><u>Amount</u></th> <th style="text-align: left;"><u>Description</u></th> </tr> </thead> <tbody> <tr> <td>01.09.17</td> <td>10.00</td> <td>Cheque Book fee</td> </tr> </tbody> </table>	<u>Date</u>	<u>Amount</u>	<u>Description</u>	01.09.17	10.00	Cheque Book fee	
<u>Date</u>	<u>Amount</u>	<u>Description</u>					
01.09.17	10.00	Cheque Book fee					
LESS Authorised ADI Interest incorrectly credited	15.00						
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Date</u></th> <th style="text-align: left;"><u>Amount</u></th> <th style="text-align: left;"><u>Description</u></th> </tr> </thead> <tbody> <tr> <td>30.09.17</td> <td>15.00</td> <td>Interest</td> </tr> </tbody> </table>	<u>Date</u>	<u>Amount</u>	<u>Description</u>	30.09.17	15.00	Interest	
<u>Date</u>	<u>Amount</u>	<u>Description</u>					
30.09.17	15.00	Interest					
Sub Total	13,725.00						
LESS Unpresented Cheques	220.00						
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Date</u></th> <th style="text-align: left;"><u>Cheque No.</u></th> <th style="text-align: left;"><u>Amount</u></th> </tr> </thead> <tbody> <tr> <td>20.09.17</td> <td>857602</td> <td>220.00</td> </tr> </tbody> </table>	<u>Date</u>	<u>Cheque No.</u>	<u>Amount</u>	20.09.17	857602	220.00	
<u>Date</u>	<u>Cheque No.</u>	<u>Amount</u>					
20.09.17	857602	220.00					
Balance as per cash book	<u>13,505.00</u>						

Prepared By: Sean Spinak on 5/10/17

Note: Refer to Rule 48(2)(a), 48(3) and 48(4) for the required details to be recorded for trust authorised ADI reconciliation statements.

NATIONAL AUSTRALIA BANK

150 Phillip Street
Sydney

BANK (AUTHORISED ADI) STATEMENT

ACCOUNT NAME: Philpott and Associates Law Practice Trust Account
ACCOUNT NO.: 941-9404
BSB: 082-009
ACCOUNT ADDRESS: 8th Floor
170 Phillip Street
Sydney

STATEMENT for period 01.09.17 to 30.09.17

Date	Particulars	Debit	Credit	Balance
01.09.17	Balance			0.00
01.09.17	Cheque Book fee	10.00		10.00 DR
01.09.17	Deposit		6,000.00	5,990.00 CR
04.09.17	Direct deposit		15,000.00	20,990.00 CR
05.09.17	Deposit		166,000.00	186,990.00 CR
14.09.17	Direct deposit		15,000.00	201,990.00 CR
16.09.17	857600	170,000.00		31,990.00 CR
17.09.17	Deposit		15,000.00	46,990.00 CR
18.09.17	Deposit		4,000.00	50,990.00 CR
22.09.17	857601	150.00		50,840.00 CR
	857604	1,100.00		49,740.00 CR
	EFT	10,000.00		39,740.00 CR
26.09.17	Dishonoured Cheque	5,000.00		34,740.00 CR
27.09.17	Deposit		5,000.00	39,740.00 CR
29.09.17	EFT	10,000.00		29,740.00 CR
30.09.17	857605	25.00		29,715.00 CR
	857606	1,000.00		28,715.00 CR
	857608	16,500.00		12,215.00 CR
	Interest		15.00	12,230.00 CR

Philpott and Associates

8th Floor
170 Phillip Street
Sydney NSW 2000

Mr A J. Smith
Executor
21 Belmore Road
Canterbury 2193

Account Name Smith Arthur Jack
Address 21 Belmore Road, Canterbury 2193
Matter Ref: **S2**
Matter Description: Estate Late May Smith

Other Party:

TRUST ACCOUNT STATEMENT AS AT 30.09.17

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
05.09.17	R5	Commonwealth Bank Proceeds of bank a/c 153-607		15,000.00	15,000.00
05.09.17	R6	A.J. Smith Proceeds of Auction of Estate Prop		1,000.00	16,000.00
05.09.17	R7	State Gov Superannuation Fund Proceeds of Superannuation Policy		160,000.00	176,000.00
05.09.17	R8	Max Wright Proceeds sale of May Smith's M/V		5,000.00	181,000.00
15.09.17	P600	St George Bank Investment of Estate funds	170,000.00		11,000.00
16.09.17	R11	A.G.C. Insurances Limited Proceeds of Life Policy		10,000.00	21,000.00
21.09.17	EFT01	Philpott & Associates Controlled Money Account Smith Estate XXX-XXX XX25604 Additional investment of estate funds	10,000.00		11,000.00
26.09.17	R8	Max Wright Receipt cancelled - dishonoured chq	5,000.00		6,000.00
27.09.17	R16	Max Wright Funds to replace dishonoured cheque		5,000.00	11,000.00
29.09.17	EFT02	A Heffron XXX-XXX-163-705 Final distribution of estate	10,000.00		1,000.00
29.09.17	P606	Philpott and Associates Costs as per bill	1,000.00		0.00

Note: Refer to Rule 52(3) for particulars to be contained in the Trust Account Statement and Rule 52(4) and 52(5) for when it is required to be given.

Controlled Money

The original controlled money receipt should disclose the following particulars:

PHILPOTT & ASSOCIATES CONTROLLED MONEY RECEIPT		Receipt: 1 Date: 5/9/17
Received from: Mr P CHIDIAC		
The sum of: Fifteen Thousand Dollars only		
\$ 15,000.00	CASH/CHEQUE/DIRECT DEPOSIT	
For and on behalf of: Mr P CHIDIAC		
Matter Ref: C1 Matter Description: Shoplifting charges / Litigation		
Reason: To invest with St George Bank at call at interest rates determined by St George. Such money to be held until disbursements are incurred		
Name of controlled money account to be credited: To be advised		
Account Number (incl BSB): To be advised		
Issued by: S Spinak	Name: Sean Spinak	

Refer to Rule 62 for the particulars to be contained in the controlled money receipt.

After the opening of the controlled money account, the account details must be noted on the duplicate controlled money receipt - see below:

PHILPOTT & ASSOCIATES CONTROLLED MONEY RECEIPT		Receipt: 1 Date: 5/9/17
Received from: Mr P CHIDIAC		
The sum of: Fifteen Thousand Dollars only		
\$ 15,000.00	CASH/CHEQUE/DIRECT DEPOSIT	
For and on behalf of: Mr P CHIDIAC		
Matter Ref: C1 Matter Description: Shoplifting charges / Litigation		
Reason: To invest with St George Bank at call at interest rates determined by St George. Such money to be held until disbursements are incurred		
Name of controlled money account to be credited: To be advised		
Philpott & Associates ITF Peter Chidiac Controlled Money Account		
Account Number (incl BSB): To be advised --- XXX-XXX 0634607		
Issued by: S Spinak	Name: Sean Spinak	

The original controlled money receipt should disclose the following particulars:

PHILPOTT & ASSOCIATES CONTROLLED MONEY RECEIPT		Receipt: 2 Date: 15/9/17
Received from: Philpott & Associates Law Practice Trust A/c		
The sum of: One Hundred And Seventy Thousand Dollars only		
\$ 170,000.00	CASH/CHEQUE/DIRECT DEPOSIT	
For and on behalf of: Mr A J SMITH		
Matter Ref: S2	Matter Description: Estate late May Smith	
Reason: To be deposited with St George Bank at the market rate of interest at call		
Name of controlled money account to be credited: To be advised		
Account Number (incl BSB): To be advised		
Issued by: S Spinak	Name: Sean Spinak	

After the opening of the controlled money account, the account details must be noted on the duplicate controlled money receipt - see below:

PHILPOTT & ASSOCIATES CONTROLLED MONEY RECEIPT		Receipt: 2 Date: 15/9/17
Received from: Philpott & Associates Law Practice Trust A/c		
The sum of: One Hundred And Seventy Thousand Dollars only		
\$ 170,000.00	CASH/CHEQUE/DIRECT DEPOSIT	
For and on behalf of: Mr A J SMITH		
Matter Ref: S2	Matter Description: Estate late May Smith	
Reason: To be deposited with St George Bank at the market rate of interest at call – Interest 4.85% p.a		
Name of controlled money account to be credited: To be advised --- Philpott & Associates ITF A J Smith on behalf of Estate late May Smith Controlled Money Account		
Account Number (incl BSB): To be advised --- XXX-XXX XX25604		
Issued by: S Spinak	Name: Sean Spinak	

PHILPOTT & ASSOCIATES
CONTROLLED MONEY RECEIPT

Receipt: 3
Date: 21/9/17

Received from: **Philpott & Associates Law Practice Trust A/c**

The sum of: **Ten Thousand Dollars only**

\$ 10,000.00 CASH/CHEQUE/DIRECT DEPOSIT

For and on behalf of: **Mr A J SMITH**

Matter Ref: **S2** Matter Description: **Estate late May Smith**

Reason: **Additional investment to be deposited with St George Bank at the market rate of interest at call**

Name of controlled money account to be credited: **Philpott & Associates ITF A J Smith on behalf of Estate late May Smith Controlled Money Account**

Account Number (incl BSB): **XXX-XXX XX25604**

Issued by: **S Spinak** Name: **Sean Spinak**

The original and duplicate controlled money receipt should disclose the following particulars:

PHILPOTT & ASSOCIATES
CONTROLLED MONEY RECEIPT

Receipt: 4
Date: 28/9/17
Date Received: 26/9/17

Received from: **Mr A J Smith**

The sum of: **Five Thousand Dollars only**

\$ 5,000.00 CASH/CHEQUE/DIRECT DEPOSIT

For and on behalf of: **Mr A J SMITH**

Matter Ref: **S2** Matter Description: **Estate late May Smith**

Reason: **Estate funds – realisation from the sale of an asset**

Name of controlled money account to be credited: **Philpott Philpott & Associates ITF A J Smith on behalf of Estate late May Smith Controlled Money Account**

Account Number (incl BSB): **XXX-XXX XX25604**

Issued by: **S Spinak** Name: **Sean Spinak**

Philpott and Associates Controlled Money Movements Record

CLIENT NAME: Chidiac P Matter Ref. C1
 CLIENT ADDRESS: 16 Oaks Drive
 Merrylands NSW 2160

FINANCIAL INSTITUTION: St George Bank
 ADDRESS: Hurstville Branch
 149 Hurstville Road
 Hurstville

Original Investment
 Amount \$15,000.00 Date: 05.09.17
 Account Name: Philpott and Associates ITF Peter Chidiac Controlled Money Account
 BSB No: XXX-XXX
 Account No. 0634607
 Term/Duration At call

INTEREST: Rate 4.85%
 Payable from 05.09.17
 Payable Monthly

Date Rct/ Rec'd/ Paid [Note]	Rec'd/Paid Ref No. & Form	Paid to/Received from Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Person Authorising Withdrawal
05.09.17	1 Cash	P Chidiac Investment on account of disbursements		15,000.00	15,000.00	-

Refer to Rule 64 for the required information and particulars to be recorded in the Controlled Money Movements Record.

Note: The column headed Date Rct/Rec'd/Paid is used to record the date of the receipt and, if different, the date the money was received, or the date of the cheque or electronic funds transfer.

Philpott and Associates Controlled Money Movements Record

CLIENT NAME: Smith Arthur Jack Matter Ref. S2
 CLIENT ADDRESS: 21 Belmore Road
 Canterbury 2193

Matter Description: Estate late May Smith

FINANCIAL INSTITUTION: St George Bank
 ADDRESS: Hurstville Branch
 149 Hurstville Road, Hurstville

Original Investment Amount \$170,000.00 Date:15.09.17
 Account Name: Philpott and Associates ITF A J Smith OBO Estate late May
 Smith Controlled Money Account
 BSB: XXX-XXX Account No. XX25604
 Term/Duration At call

INTEREST: Rate 4.85%
 Payable from 16.09.17
 Payable Monthly

Date Rct/ Rec'd/ Paid	Rec'd/Paid Ref No. & Form	Paid to/Received from Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Person Authorising Withdrawal
16.09.17	2 Chq Dep	Philpott and Associates Law Practice Trust A/c Investment of Estate Money		170,000.00	170,000.00	-
21.09.17	3 EFT Dep	Philpott and Associates Law Practice Trust A/c Additional investment of estate money		10,000.00	180,000.00	-
28.09.17 26.09.17	4 Direct Dep	A J Smith Estate – realisation from the sale of an asset		5,000.00	185,000.00	-
29.09.17	* Direct Dep	St George Bank Limited Interest credited on closure of A/c		150.00	185,150.00	-
29.09.17	A123456 EFT Dep	Mr T Heffron Telegraphic transfer to the credit of T Heffron, account number 062-100-123-456 (CBA, Tamworth) Final distribution plus interest	92,575.00		92,575.00	J Philpott
29.09.17	150151 Chq Dep	Mrs J Heffron Final distribution plus interest	92,575.00		0.00	J Philpott

* ADI statement reference to be included, if applicable.

Note: Refer to Rule 64 for the information and particulars to be recorded in the Controlled Money Movements Record.

Philpott and Associates
8th Floor
170 Phillip Street
Sydney 2000

Mr A J Smith
Executor
21 Belmore Road
Canterbury 2193

CONTROLLED MONEY ACCOUNT STATEMENT AS AT 30.09.17

Matter Ref: S2
Matter Description: Estate late May Smith

Original Investment Amount: \$170,000.00
Date of Investment: 15.09.17
Account Name: Philpott and Associates ITF A J Smith
OBO Estate late May Smith Controlled Money Account

BSB: XXX-XXX
Account No: XX25604
Term/Duration: At call
Interest - Rate: 4.85%
Payable from: 16.09.17
Payable: Monthly

Date Rct/ Rec'd/ Paid	Rec'd/Paid Ref No. & Form	Paid to/Received from Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Person Authorising Withdrawal
16.09.17	2 Chq Dep	Philpott and Associates Law Practice Trust A/c Investment of Estate Money		170,000.00	170,000.00	-
21.09.17	3 EFT Dep	Philpott and Associates Law Practice Trust A/c Additional investment of estate money		10,000.00	180,000.00	-
28.09.17 26.09.17	4 Direct Dep	A J Smith Estate – realisation from the sale of an asset		5,000.00	185,000.00	-
29.09.17	* Direct Dep	St George Bank Limited Interest credited on closure of A/c		150.00	185,150.00	-
29.09.17	A123456 EFT Dep	Mr T Heffron Telegraphic transfer to the credit of T Heffron, account number 062- 100-123-456 (CBA, Tamworth) Final distribution plus interest	92,575.00		92,575.00	J Philpott
29.09.17	150151 Chq Dep	Mrs J Heffron Final distribution plus interest	92,575.00		0.00	J Philpott

* ADI statement reference to be included, if applicable.

Note: Refer to Rule 52(3) for the required particulars to be contained in the Controlled Money Account Statement and Rule 52(4) and 52(5) for when it is required to be given.

**Philpott and Associates
Controlled Money Listing
as at 30.09.17**

Persons Name	Account Name	Account No/ADI	Matter Ref Matter Description	Amount
Chidiac P	Philpott & Associates ITF Peter Chidiac Controlled Money Account	xxx-xxx-0634607 St George	C1 Litigation	\$15,000.00
			Total	\$15,000.00

Prepared by: Sean Spinak
 Prepared on: 15 October 2017
 Reviewed by: Peter Philpott
 Name of Principal

Peter Philpott 16 October 2017
 Signature Date

Note: Refer to Rule 64(8) for the required details to be recorded in the controlled money listing and when it is required to be prepared.

Philpott and Associates Register of Powers and Estates					
Date of Power	Name and Address of Donor	Matter Ref.	Matter Description	Date of Death of Deceased	Responsible Solicitor
10.09.17	Mr Tim Ryan 19 Reece Street Guildford NSW 2161	R1	To operate the client's personal bank account at Westpac, Arncliffe branch, 179 Summer Street, Arncliffe, Acct No: 220-356	N/A	Sean Spinak

The law practice must also keep a record of all dealings to which the law practice or associate is a party in accordance with Rule 55, as follows:

Philpott and Associates Power Money Record

CLIENT NAME: RYAN, Tim Matter Ref. R1
 CLIENT ADDRESS: 19 Reece Street
 GUILDFORD NSW 2161

FINANCIAL INSTITUTION: Westpac Bank
 ADDRESS: Arncliffe Branch
 179 Summer Street, Arncliffe

Date of power/authority: 10.09.2017 Security Documents Packet Ref: X3155
 Account Name: Tim Ryan
 BSB: 123-456
 Account No. 220-356

Date Rec'd/ Paid	Rec'd/Paid/ Ref No. & Form	Paid to/ Received from Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Person Authorising Withdrawal
10.09.17	-	Opening Balance			5,000.00	-
30.09.17	002315 Cheque	The Medical Professionals Payment of medical account as directed by client	200.00		4,800.00	Sean Spinak

Note: The above record is the preferred method for the recording of the dealings in power money. Other supporting documentation (e.g. invoice for payment, copy of the paid cheque, deposit slip) should be kept together with the record.

In scenarios where there are other persons who may also operate the personal bank account (e.g. the client or other persons who may also be a sole signatory to the bank account), the balance column may not accurately reflect the balance of the account. Therefore, this column may then be omitted to avoid confusion.

THE LAW SOCIETY OF NEW SOUTH WALES

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