



**TECHNICAL
RELEASE TR
01/2016**

**Solicitors Accounts Regulations 2014 –
Republic of Ireland**

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1. Introduction

The Solicitors Accounts Regulations 2014

Section 66 of the Solicitors Act 1954 (as amended) conveys to The Law Society of Ireland ('the Society') the power to make regulations with regard to accounts of solicitors. In November 2014 the Council of the Law Society of Ireland approved the Solicitors Accounts Regulations 2014 – S.I. No. 516 of 2014 ('the Regulations'). The Regulations came into force on 1 December 2014 and apply to accounting periods beginning on or after that date.

The Regulations represent primarily a consolidation of the previous Solicitors Accounts Regulations 2001 to 2013 and the Solicitors (Interest of Clients' Moneys) Regulations 2004 (S.I. No. 372 of 2004) – ('the previous regulations'). The notice accompanying the publication of the Regulations states that the previous regulations remain in force for accounting periods which commenced prior to 1 December 2014.

The Regulations govern the maintenance by solicitors of client accounts, controlled trust accounts, non-controlled trust accounts, insolvency arrangement accounts and relevant office account transactions. They also set out the requirements on reporting accountants to carry out an examination of the accounting records of the solicitor and to report to the Law Society of Ireland in accordance with the Regulations.

The accompanying notice issued by the Society also stated that there are no fundamental changes to the Regulations for solicitors, however reporting accountants will note that solicitor's compliance with the requirements in regulation 8 on Interest is likely to necessitate more detailed testing than under the previous regulations. See section 7 in relation to this. The text of the notice is provided in appendix 1 to this Technical Release.

Technical Release (TR) 01/2016 Solicitors Accounts Regulations 2014

TR 01/2016 is intended to provide information for members undertaking reporting engagements in accordance with the Regulations. It replaces Miscellaneous Technical Statement (M) 38 *Solicitors Accounts Regulations, 2001 – Republic of Ireland* and information sheets IS 07/2008 *Amendments to Solicitors Accounts Regulations 2001 and Professional Indemnity Insurance Minimum Cover for Reporting Accountants in the Republic of Ireland* and IS 01/2014 *Matters arising from the Solicitors Accounts (Amendment) Regulations 2013*.

This Technical Release summarises some of the key requirements of the Regulations but should not be read in isolation or as a replacement for the Regulations. Members should read the Regulations in conjunction with this Technical Release. The Regulations are available on the [website of the Law Society of Ireland](#).

Reference to solicitor/(s) in this Technical Release includes reference to a firm of solicitors unless the context otherwise requires.

Solicitors' Accounts Regulations Work Programme ('SARs work programme')

The Practice Consulting department at Chartered Accountants Ireland ('the Institute') has developed a SARs work programme which may be of assistance to reporting accountants in planning and carrying out their examination and reporting under the Regulations.

Personal Insolvency Act 2012 ('PIA 2012') and Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013 ('S.I. No. 247 of 2013')

The Regulations clarify a couple of issues with regard to the PIA 2012 and S.I. No. 247 of 2013:

- In cases where there is conflict between the provisions of the Regulations and of the PIA 2012 and/or S.I. no 247 of 2013, the latter take precedence over the Regulations; and
- The reporting accountant is not required to examine or report on the solicitor's compliance with the provisions of PIA 2012 or S.I. No. 247 of 2013.

2. Engagement acceptance

Professional ethics

In carrying out a reporting engagement in accordance with the Regulations, members are subject to the ethical requirements and guidance laid down by the Institute, including the Rules of Professional Conduct and the fundamental principles contained in the extant version of the Code of Ethics for Members ('the Code').

The ***fundamental principles*** are:

- **Integrity** – to be straightforward and honest in all professional and business relationships.
- **Objectivity** – to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.
- **Professional Competence and Due Care** – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.
- **Confidentiality** – to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the professional accountant or third parties.
- **Professional Behaviour** – to comply with relevant laws and regulations and avoid any action that discredits the profession.

Independence

Regulation 26(4) specifies requirements with regard to who may act as a reporting accountant under the Regulations, including requirements with regard to the independence of the reporting accountant – who cannot be, or ever have been, “a partner, consultant, clerk or servant of the solicitor concerned”.

Section 291 of the Code considers the objectivity requirement pertaining to assurance engagements, such as engagements involving reporting under the Regulations. The Code requires that “members of assurance teams and firms be independent of assurance clients” and that firms evaluate any threats created by a firm’s interests and relationships (paragraph 291.3).

The Code emphasises that independence comprises both “independence of mind” and “independence in appearance” (paragraph 291.5). Reporting accountants should consider whether the facts and circumstances would lead a “reasonable and informed third party” to conclude that a firm’s integrity, objectivity or professional scepticism, or those of a member of the engagement team, has been compromised.

The Code requires that reporting accountants (i) identify threats to independence, (ii) evaluate the significance of those threats and (iii) apply safeguards to eliminate or reduce them to an acceptable level.

It further requires that the reporting accountant refuse or terminate the engagement if it is not possible to reduce the threats identified to an acceptable level (paragraph 291.6).

With regard to an engagement to report under the Regulations, examples of threats could include:

- **Self-interest** – direct financial interest of one of the engagement team members in the solicitor’s firm, undue dependence on total fees (the proportion of the firm’s total fees earned on the engagement with the solicitor) , outstanding fees from previous engagements, business relationships between the firm and the solicitor; loans or guarantees given to or received from the solicitor.
- **Self-review** – preparation of the original data used to generate the records that are the subject matter of the assurance engagement; (reporting accountants are precluded from ever having been “a partner, consultant, clerk or servant of the solicitor concerned”, by regulation 26(4)(b));
- **Familiarity** - a member of the engagement team having a close or immediate family member who is a partner or senior employee of the solicitor; a professional accountant accepting gifts or preferential treatment from a client, unless the value is trivial or inconsequential; long association with the engagement.

Reporting accountants should refer to the Code, and in particular Section 291, when carrying out their assessment of compliance with the fundamental principles for the engagement.

Other ethical considerations

In determining whether to accept an engagement, in addition to the above independence and objectivity considerations, reporting accountants will also consider the requirement contained in section 210 of the Code regarding professional appointment. The Code notes that potential threats to integrity or professional behaviour may arise in various circumstances, for example from “questionable issues associated with the client, its owners, management or activities” (paragraph 210.1), from involvement in illegal activities such as money laundering, from dishonest or questionable financial reporting practices. As per the independence issue above, the reporting accountant is required to identify and evaluate the significance of the threats and consider potential safeguards to reduce the risk of non- compliance with the fundamental principles to an acceptable level (paragraphs 210.2 and 210.3). Reporting accountants decline or terminate the engagement where they are not able to reduce the threats to an acceptable level.

The reporting accountant also considers the threat to the fundamental principle of professional competence and due care in terms of the competencies of the engagement team (paragraph 210.6). A professional accountant in public practice is obliged to provide only those services that he/she is competent to perform. This would include considering the experience and competence of the engagement team.

The reporting accountant considers the need for the use of experts where necessary (paragraph 210.7).

The Code also recommends that reporting accountants review the client acceptance decision periodically for recurring engagements (paragraph 210.5).

Anti-money laundering (AML) procedures

In advance of accepting an engagement to act as reporting accountant in accordance with the Regulations, professional accountants are subject to the requirements of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. Their responsibilities include:

- Performing and documenting/updating a money laundering risk assessment for the

solicitor client; and

- Carrying out the required client due diligence procedures (understanding the ownership and control of the solicitors firm, obtaining the appropriate evidence of identity of those controlling the solicitors firm, understanding the solicitor's source of funds) depending on their assessed level of risk.

Change in reporting accountant

Where a professional accountant is accepting an engagement as reporting accountant to a solicitor for the first time, the professional accountant is required to determine whether there are any reasons, professional or otherwise, for not accepting the engagement. The Code states that a professional accountant "at least seeks to contact the existing accountant". Standard practice is for the professional accountant to

- Explain to the prospective client that there is a professional duty to contact the existing accountant; and
- Request that the client inform the existing accountant of the proposed change and authorise the existing accountant to cooperate with the request for information.

The existing reporting accountant is expected to respond promptly to such requests, however professional accountants are aware that the failure of the existing reporting accountant to respond does not prevent the professional accountant from accepting the engagement or carrying out any of the work required.

The solicitor is required by regulation 26(3)(d) to report a change in reporting accountant to the Society within 14 days of the change taking place.

Professional Indemnity Insurance

Regulation 26(4)(c) requires that "A reporting accountant" maintain:

"such minimum level of professional indemnity insurance cover as the Society may appropriately and reasonably direct from time to time in order to provide for indemnity against losses arising from claims incurred (inter-alia) in connection with his or her professional practice as a reporting accountant".

At the date of publication of this Technical Release, the minimum level of PII cover required by the Society is €500,000. Reporting accountants should confirm the minimum amount required in advance of the engagement.

3. Terms of engagement

It is considered good practice for professional accountants accepting an engagement to act as reporting accountant to a solicitor in accordance with the Regulations to ensure that the terms of the engagement are agreed in writing, clearly indicating the work to be undertaken by the reporting accountant. The International Standard on Auditing (UK and Ireland) 210 *Agreeing the terms of audit engagements* provides useful guidance on engagement letters, albeit in the context of a statutory audit engagement. An engagement letter should be tailored to the specific circumstances of the client and the engagement and it would be advisable to review engagement letters annually to consider whether there is a need for updates, for example legal references updates, changes in scope or requirements of the engagement.

There are various different issues which may be dealt with in the engagement letter. An important issue, for example, would be a clear statement of the respective responsibilities of the solicitor and the reporting accountant.

The professional accountant engaged as a reporting accountant may, in agreement with the solicitor, undertake further accounting, tax or other services for the solicitor client, in addition to the engagement under the Regulations. In agreeing to accept such further engagement, the professional accountant considers the independence and objectivity requirements of the Code, as discussed in section 2 above. Any agreement to undertake such additional work should be subject to the agreement of separate engagement terms.

Any such additional work is outside the scope of the report under the Regulations.

Engagement letters are legal contracts and professional accountants may consider obtaining legal advice before signing such a contract.

4. Planning

It would be advisable for reporting accountants to prepare a planning memorandum for the engagement. Issues that may be addressed in this document include:

- The nature and extent of the engagement;
- The reporting accountant's understanding of the solicitors firm, such as the places of business, the type and nature of legal services provided, the level of client moneys held, whether the solicitor has controlled trust accounts, non-controlled trust accounts and/or insolvency arrangement accounts in addition to client accounts;
- The reporting accountant's understanding of the accounting systems, and accounts staff, employed by the solicitor and control environment regarding the maintenance of, and recording of transactions on, client/controlled trust/non-controlled trust/insolvency arrangement accounts;
- Documentation of the risk assessment. In performing the risk assessment the reporting accountant may consider matters such as:
 - o The understanding of the solicitors firm, and the accounting system used and the control environment regarding the maintenance and recording of transactions;
 - o Knowledge of the solicitor and any external conditions facing the profession in general, for example if the reporting accountant is aware of financial difficulties being experienced by the solicitor and adverse economic conditions impacting the solicitor's business and the implications this might have;
 - o Any experience of difficulties/issues that may have arisen in the past in relation to the engagement, and any PII claims or complaints that may have arisen;
 - o Any information obtained by the reporting accountant in the performance of other engagements for the solicitor which he/she considers relevant to identifying risks in relation to the engagement.

On this basis, document the key risks and how they will be addressed;

- Documentation of the weighting of work to be carried out on relevant areas, which will vary from engagement to engagement depending on the individual circumstances of the client and the engagement and the reporting accountant's risk assessment.

This is not an exhaustive list of issues that may be dealt with in the planning memorandum.

The reporting accountant will also consider the composition of the engagement team in terms of:

- The experience and knowledge of the Regulations and reporting to the Law Society of Ireland in accordance with the Regulations,
- An understanding of the wider reporting and regulatory environment in which the solicitor operates, and
- An understanding of the business of the solicitor, the professional services the solicitor provides and the sectors in which the solicitor operates.

New engagements can present particular challenges in this regard.

The reporting accountant should also ensure that the engagement team understand their requirements under the AML legislation and other criminal justice legislation (e.g. the

Criminal Justice Act 2011) and the firm's procedures with regard to reporting suspicions of money laundering or terrorist financing. Miscellaneous Technical Statement M42 (Revised) *Anti-Money Laundering Guidance - Republic of Ireland* provides guidance on complying with the requirements of the AML legislation in Ireland. Information Sheet 01/2013 *Criminal Justice Act 2011 - Reporting Implications for Members in Practice and in Business* provides commentary on the reporting obligation under that legislation.

In planning the engagement, there are a number of practical issues that will need to be discussed with the solicitor client. For example, the Regulations require that certain statements be prepared by the solicitor in a timely manner, so it would be helpful in obtaining evidence of the timely preparation of such statements, that the reporting accountant discuss this requirement with the solicitor in advance of the engagement and agree how such evidence may be obtained. Another example might be the preparation of balancing statements and office balancing statements in the formats of the appendices to the prescribed reporting accountant's report per the Second Schedule to the Regulations (for further details, see Section 8 of this Technical Release).

Reporting accountants consider the need to obtain and review correspondence between the solicitor and the Law Society in the period since the last engagement.

Further guidance on planning an engagement is available in International Standard on Auditing (UK and Ireland) 300 *Planning an audit of financial statements*, albeit in the context of a statutory audit engagement. The work required in reporting under the Regulations is extensive. However, it does not amount to an audit of the solicitor's accounts. As such the International Standards on Auditing (UK & Ireland) issued by the FRC do not apply to these engagements, although as mentioned elsewhere in this Technical Release they may provide useful guidance to reporting accountants in specific circumstances.

5. Handling of moneys under the Regulations

Structure of the Regulations

The Regulations are organised into the following Parts:

- Part I Preliminary (including definitions)
- Part II Client Account and Office Account
- Part III(A) Controlled Trusts
- Part III(B) Non-controlled Trusts
- Part III(C) Insolvency Arrangements
- Part IV Accounting Records
- Part V Reporting Accountant's Report
- Part VI Investigation of Solicitors' Practices
- Part VII General (including issues about the responsibility of individual partners in a firm of solicitors for compliance and solicitor's lien)

The *First Schedule* sets out the wording of section 66 of the Solicitors Act 1954 (as amended) under which the Regulations are made, and the *Second Schedule* sets out the form of the reporting accountants' report, including the appendices therein.

Certain of the key aspects of the Regulations as regards the handling of moneys are discussed below.

Client account

This is a bank account (current or deposit account) opened and kept by a solicitor in his/her name designated for clients' moneys. The Regulations require that such accounts contain the word 'client' in their titles. A client account may be general, in which moneys belonging to various clients are held, or dedicated, in which only moneys belonging to a specific client are held.

Controlled trust and controlled trust account

A controlled trust is a trust or an administration of an estate of which the solicitor in question is a controlling trustee (either solely, or as a co-trustee, co-executor or co-administrator with a partner/employee of the solicitor).

A controlled trust account is a bank account (current or deposit) opened and kept by a controlling trustee in his/her name solely for moneys subject to a particular controlled trust. The Regulations require that such an account contains the word 'trustee', 'executor' or 'administrator' in its title or is otherwise clearly designated as a controlled trust account.

Non-controlled trust and non-controlled trust account

A non-controlled trust is a trust or an administration of an estate where the solicitor in question is a co-trustee, co-executor or co-administrator with one or more persons who are not partners or employees of the solicitor.

A non-controlled trust account is a bank account (current or deposit) opened and kept by a non-controlling trustee, in the names of each of the trustees, each of the executors or each of the administrators. The Regulations require that such an account contains the word 'trustee', 'executor' or 'administrator' in its title, or is otherwise clearly designated as a non-controlled trust account.

Insolvency arrangement and insolvency arrangement account

An insolvency arrangement is

- **a debt settlement arrangement** (per the PIA 2012 an arrangement entered into by a debtor, or an arrangement for which a proposal is made under Chapter 3 of Part 3 of the PIA 2012, with one or more of his or her creditors in respect of the payment or satisfaction of his or her debts); or
- **a personal insolvency arrangement** (per the PIA 2012 an arrangement entered into by a debtor, or an arrangement for which a proposal is made, under Chapter 4 of Part 3 of the PIA 2012, with one or more of his or her creditors in respect of the payment, satisfaction or restructuring of his or her debts)

An insolvency arrangement account is a bank account (current or deposit) opened and kept by a personal insolvency practitioner (in this case, where the solicitor is so appointed) solely for the purposes of receiving payments from or on behalf of a debtor and transmitting such payments to creditors (after deducting fees, costs and outlays as permitted by the legislation and the insolvency arrangement). The Regulations require that such an account contains the words 'insolvency arrangement' in its title, or is otherwise clearly designated as an insolvency arrangement account.

Accounts to be kept in the State

In accordance with the definition of 'bank' in the Regulations, all client/controlled trust/non-controlled trust, insolvency arrangement and office accounts should be opened and kept at banks or financial institutions which are licensed by the Central Bank of Ireland and situated in the State.

Some key breaches to note

Whilst there is a wide range of requirements with which a solicitor must comply, and on which compliance the reporting accountant must report, some are worthy of highlighting:

- It is a breach of the Regulations for a **debit balance** to arise on any client ledger account, controlled trust ledger account or insolvency arrangement ledger account, **unless it is totally offset** by a credit balance arising on another client ledger account/controlled trust ledger account/ insolvency arrangement ledger account in respect of the same client within the client ledger/controlled trust/insolvency arrangement respectively – see:
 - Regulation 7(2)(a) – client ledger accounts;
 - Regulation 18(4)(a) – controlled trust ledger accounts; and
 - Regulation 23(4)(a) – insolvency arrangement ledger accounts.
- It is a breach for solicitors to **discharge personal or office expenses** from client/controlled trust/non-controlled trust or insolvency arrangement accounts – see:
 - Regulation 7(2)(b) – client accounts;
 - Regulation 18(4)(b) – controlled trust accounts;
 - Regulation 20(2) – non-controlled trust accounts; and
 - Regulation 23(4)(b) – insolvency arrangement accounts.
- Failure to maintain books of account and accounting records and other documents as required by various regulations including regulations 13, 19, 20 and 24.
- The failure to appropriately **account for interest** in accordance with regulation 8.
- A credit balance to arise on the office side of the client ledger account unless that credit balance is totally offset by a debit balance or balances arising on the office

side of one or more client ledger accounts in respect of the same client – see regulation 11(5) and Appendix 2 of this Technical Release.

- The failure to correct, without delay, where a credit balance arises on the office side of the client ledger account which is not so offset.

Readers should be aware that there are also many potential breaches of the requirements regarding **receipt of moneys** into client/controlled trust/non-controlled trust/insolvency arrangement accounts and **withdrawal of moneys** from such accounts—see:

- Regulations 4 to 9 - client accounts;
- Regulations 14 to 18 – controlled trust accounts;
- Regulation 20 – non-controlled trust accounts;
- Regulations 21 to 23 – insolvency arrangement accounts.

The requirements regarding the receipt of moneys into accounts and the withdrawal of moneys from those accounts are discussed in more detail below, including the requirement not to leave moneys to which the solicitor is beneficially entitled in these accounts any longer than is permitted by the Regulations – three months after the solicitor becomes so entitled.

The above list is not exhaustive and reporting accountants should be familiar with the regulations and all potential breaches therein.

Receipts and withdrawals of moneys

Several of the regulations concerning the receipt and withdrawal of moneys from accounts require a transaction or transactions to be carried out “without delay”. We understand “without delay” to mean the day of receipt or the following business day.¹

As noted above, it is a breach of the Regulations for a solicitor to discharge personal or office expenditure from client accounts, controlled trust accounts, non-controlled trust accounts and insolvency arrangement accounts. It is also a breach to pay personal or office debts out of money due to the solicitor in these accounts by cheques drawn from these accounts in favour of third parties, as this would not be in accordance with the manner of withdrawal permitted by Regulation 9, notwithstanding that the solicitor is beneficially entitled to the amount in question.

Co-mingled moneys – insolvency arrangement moneys

One key difference between the handling of insolvency arrangement moneys and the handling of clients or controlled trust or non-controlled trust moneys is that the Personal Insolvency Act 2012, and thus the Regulations, both require that there be no co-mingling of insolvency arrangement moneys whatsoever, e.g. where the solicitor receives a cheque containing a mixture of insolvency arrangement moneys with other moneys. In contrast to controlled trust or non-controlled trust moneys, it is not permitted to lodge insolvency arrangement moneys into the client account in the first instance. Nor is it permitted to lodge moneys other than insolvency arrangement moneys into an insolvency arrangement account.

Solicitors are aware of their obligations with regard to the strict separation of insolvency arrangement moneys from all other moneys. As such, it is not anticipated that circumstances would often arise whereby a solicitor would receive co-mingled moneys including insolvency arrangement moneys. However, as there is no provision in the

Regulations for a procedure to deal with a scenario whereby a solicitor lodges co-mingled moneys which include insolvency arrangement moneys, this would, therefore, result in a matter to be included in the reporting accountant's report as a breach.

Where the breach has been rectified by the solicitor, the reporting accountant considers including this fact in the report.

Co-mingled moneys – other moneys (not including insolvency arrangement moneys)

If a solicitor receives co-mingled moneys involving a mixture of client moneys and/or controlled trust moneys and/or non-controlled trust moneys and/or other moneys, e.g. moneys to which the solicitor is beneficially entitled, regulation 6(1) requires that they be

¹ The phrase "without delay" is also used in other parts of the Regulations and may be similarly understood in that regard.

lodged to client account in the first instance and, thereafter, “without delay”, the relevant amounts be transferred to the appropriate accounts.

Other requirements on receipt and withdrawal of moneys

Client/controlled trust/non-controlled trust/insolvency arrangement moneys received are, as a general rule, to be paid into the appropriate account “without delay”. There are a couple of specific exceptions to this general rule, see

- regulation 6(3), where the client instructs the solicitor to pay the moneys into a separate bank account in the name of the client or some other person; and
- regulation 6(4), where in the specific circumstances provided for, the moneys are paid directly to the vendor or vendor’s solicitor in the purchase of a property².

Controlled trust and non-controlled trust moneys may, however, be first lodged into client account, but controlled trust and non-controlled trust moneys must then be transferred “without delay” to the appropriate controlled trust account or the non-controlled trust account respectively.

No moneys, other than controlled trust moneys for a particular controlled trust, should be lodged into that controlled trust account. If a lodgement is made in error, it should be rectified by the solicitor immediately on becoming aware of the fact, by transferring the moneys to the appropriate account.

Moneys to which the solicitor is beneficially entitled (see regulation 5(3)) must be transferred out of client account/controlled trust account/insolvency arrangement account within three months of the solicitor becoming so beneficially entitled. There is no such requirement with regard to non-controlled trust accounts.

Withdrawals from accounts

Moneys can be withdrawn from client accounts/ controlled trust accounts/ insolvency arrangement accounts in specific circumstances, including (1) payments to clients or on behalf of clients in accordance with clients’ instructions, in executing the controlled trust or on behalf of a debtor to a creditor under an insolvency arrangement, (2) payments in relation to disbursements and for professional fees, and (3) to rectify lodgements made in error.

The following table sets out the permitted withdrawals by type of account and by transaction:

² Only permitted where the application of such proceeds for that purpose is apparent from the purchaser’s solicitor’s file.

Permitted withdrawals by type of account			
Purpose of withdrawal	Client account	Controlled trust account	Insolvency arrangement account
Payments	Regulation 7(1)(a)(i) – moneys properly required for the payment to the client concerned or (in accordance with the instructions of the client concerned) to another person or other persons on behalf of the client	Regulation 18(1)(a) – controlled trust moneys properly required for a payment in the execution of the controlled trust concerned	Regulation 23(1)(a) - moneys properly required for the payment on behalf of the debtor to a creditor according to his or her entitlement under the insolvency arrangement
Outlays/ disbursements	Regulation 7(1)(a)(ii) - moneys properly required for or towards payment of an amount due to the solicitor by the client concerned in respect of outlays actually disbursed by the solicitor on behalf of that client in the course of the provision of legal services to the client	Covered by Regulation 18(1)(a) above	Regulation 23(1)(b) - moneys properly required for or towards payment of an amount due to the personal insolvency practitioner under the PIA 2012 and Regulations made pursuant to the PIA 2012 and in accordance with the insolvency arrangement in respect of outlays actually disbursed by the personal insolvency practitioner on behalf of that debtor in the course of the provision of legal services to the debtor for which the personal insolvency practitioner has adequate documentary proof that the moneys are properly due at the time of withdrawal

Permitted withdrawals by type of account			
Purpose of withdrawal	Client account	Controlled trust account	Insolvency arrangement account
Professional fees	Regulation 7(1)(a)(iii) - moneys properly available ³ to be applied by the solicitor in satisfaction (in whole or in part) of professional fees payable by the client concerned where it has been made clear to such client that clients' moneys held by the solicitor for the client are being or will be applied by the solicitor in satisfaction (in whole or in part) of such professional fees	Covered by Regulation 18(1)(a) above	Regulation 23(1)(c) - moneys properly available to be applied by the personal insolvency practitioner in satisfaction (in whole or in part) of professional fees payable under the PIA 2012 and Regulations made pursuant to the PIA 2012 and in accordance with the insolvency arrangement where it has been made clear to such debtor that such moneys held by the personal insolvency practitioner are being or will be applied by the personal insolvency practitioner in satisfaction (in whole or in part) of such professional fees
Transfer to another client account	Regulation 7(1)(a)(iv) - moneys which are then transferred into another client account in accordance with the instructions of the client concerned	N/A	N/A

³ The description of moneys as being “properly available” does not imply that the reporting accountant has an obligation to consider whether the fee charged to the client is appropriate.

Permitted withdrawals by type of account			
Purpose of withdrawal	Client account	Controlled trust account	Insolvency arrangement account
Moneys lodged temporarily to the account	Regulation 7(1)(b) – In the case of controlled trust or non- controlled trust moneys in the client account, moneys properly required for a payment in the due execution of the controlled trust or non-controlled trust concerned; and moneys to be then transferred into a controlled trust account or a non-controlled trust account opened and maintained solely for the controlled trust moneys or the non-controlled trust moneys of the controlled trust or non-controlled trust concerned	N/A	N/A
Rectifying errors/ breaches	Regulation 7(1)(c) - moneys which for any reason have been paid into the client account by mistake or otherwise in contravention of these Regulations	Regulation 18(1)(b) - moneys, not being controlled trust moneys subject to the controlled trust concerned, which for any reason have been paid into the controlled trust account by mistake or otherwise in contravention of these Regulations	Regulation 23(1)(e) - moneys that have been transferred into the insolvency arrangement account in error for which the personal insolvency practitioner has adequate documentary proof demonstrating such error
Bank charges	Not specified	Not specified	Regulation 23(1)(d) - bank charges, where appropriate

Regulation 7(1), in specifying the money that may be withdrawn from a client account, provides that “the moneys so withdrawn shall not exceed the total of the moneys held for the time being in client account on behalf of the client concerned or the controlled trust or non-controlled trust concerned.”

A solicitor is only permitted to withdraw those moneys from client account as allowed by regulation 7 unless the Society, upon application by the solicitor, gives directions in writing.

Regulation 20(2) states that it is a breach of the Regulations to discharge personal or office expenditure from a non-controlled trust account. The Regulations otherwise contain no

specific requirements with regard to the withdrawal of monies from non-controlled trust accounts, other than the requirement that “the solicitor shall keep an appropriate record of each transaction concerning such non-controlling trust moneys in his or her books of account in accordance with Regulation 25”. However, other third party reporting obligations may arise from information gained in relation to transactions on such non-controlled trust accounts – see section 9 of this Technical Release for further consideration of this issue.

Regulation 9 specifying the manner of withdrawal from client account, applies also to controlled trust accounts (see regulation 18(2)) and insolvency arrangement accounts (see regulation 23(2)). The requirements of regulation 9 are that:

- Withdrawals are undertaken by cheque drawn on the client account, except:
 - o Where the solicitor has written instructions from the client to transfer moneys into another client account; or
 - o Where controlled trust or non-controlled trust moneys are lodged in the first instance to client account and then transferred to the appropriate trust account; or
 - o Where it is a transfer from client account to the office account under regulation 7(1)(a)(ii) or (iii), or 7(1)(c).

- Details of payee of a cheque and/or draft or other instrument, is to be recorded as outlined in regulation 9(3).

Transfers between ledger accounts

Regulation 10 deals with transfers between client ledger accounts. It prohibits the transfer of amounts from a client ledger account of one client to the client ledger account of another client, except in limited circumstances. Where such transfers take place the solicitor is obliged to maintain “...such accounting records and other documents as will enable such transaction to be appropriately vouched...” and record the transaction “... in the manner provided in Regulation 13.”

While regulation 10 does not mention a transfer between ledger accounts other than client ledger accounts, regulations 13 and 25, while detailing how transfers between client ledger accounts should be recorded, make similar requirements for the recording of transfers between controlled trust ledger accounts, non-controlled trust ledger account, insolvency arrangement ledger accounts and transfers to and from office ledger accounts.

Reporting accountants are reminded that such transfers are considered relatively rare and unusual. Their existence may represent a higher risk of non-compliance with the Regulations. Consideration is given to the existence of such transfers in planning the engagement and the testing procedures adopted.

Debit balances on client/controlled trust/insolvency arrangement ledger account

As noted above, it is a breach of the Regulations for a **debit balance** to arise on any client ledger account, controlled trust ledger account or insolvency arrangement ledger account, **unless it is totally offset** by a credit balance arising on another client ledger account/controlled trust ledger account/ insolvency arrangement ledger account in respect of the same client within the client ledger/controlled trust/insolvency arrangement respectively (see regulations 7(2)(a), 18(4)(a) and 23(4)(a)).

Where separate ledger accounts are opened for a single client concerning different client matters/different controlled trust matters/different insolvency arrangement matters, there

may be a legal right of set off of a debit balance against an equal or greater credit balance. However, reporting accountants in considering whether such offsets are in accordance with the Regulations are alert for the possibility that moneys on one or more ledger accounts may be held for a specific purpose, for example moneys held on specific instructions of the client or in respect of an undertaking given on behalf of the client, such that it may not be possible to offset such ledger accounts balances against the ledger account with the debit balance. Similarly, reporting accountants are alert to situations where debit balances and credit balances are offset on accounts due to/from companies within the same group, as there is no automatic right of offset in such circumstances. Balances on accounts of members of the same family are also not permitted to be offset, unless written instructions/agreements to do so are in place. Such situations may give rise to breaches of the Regulations which will have to be reported.

Offsets are only permitted between ledger accounts in the same ledger.

A practical difficulty of the requirement regarding debit balances could arise with regard to the payment of bank charges for each account type, and may arise more frequently with regard to insolvency arrangement accounts. When a Personal Insolvency Practitioner (PIP) accepts an insolvency client, the PIP is required to open a separate bank account, for which bank charges may apply and there may also be certain registration charges. These may be shown by the bank as an overdrawn balance on the individual insolvency arrangement bank account (or in other situations, the PIP may have to lodge funds from the office account to cover these costs). Such costs, causing a prohibited debit balance on the ledger account of the particular insolvency arrangement, are recuperated when the funds are received on disposal of assets, and the debit balance duly cleared. The amounts are likely to be insignificant in most cases, but would constitute breaches of the Regulations requiring to be reported. Such breaches are likely to be technical in nature and, as such, the reporting accountant may consider describing them in that manner in completing appendix 2 to the reporting accountant's report.

6. Books of account and accounting records

Regulation 13 requires solicitors to maintain proper books of account and such relevant supporting documents “at all times in the course of and arising from his or her practice as a solicitor” to allow the handling of clients’ moneys to be recorded and appropriately vouched. The regulations regarding books of account and accounting records for controlled trusts, non-controlled trusts and insolvency arrangements have similar requirements. The books of account are required to show the “true financial position in relation to the solicitor’s transactions with client’ moneys and with other moneys transacted by him or her through client account”.

The requirement with regard to the maintenance of books of account and accounting records emphasises the segregation of the solicitors own moneys from those held on behalf of clients, controlled trusts, non-controlled trusts and insolvency arrangements. The solicitor should be able to identify at any point in time, the moneys held on behalf of any client/controlled trust/non-controlled trust/insolvency arrangement, by matter dealt with.

To facilitate this, **among the records** that the solicitor must maintain are:

- A segregated cash book, or separate cash books, to show on the one hand, transactions on office account and, on the other hand, transactions on client account and, where applicable, transactions on controlled trust account or on non-controlled trust account or on insolvency arrangement account (see regulations 25(1)(a) and 13);
- A separate office ledger (or the office side of a client ledger), client ledger, and where applicable controlled trust ledger, non-controlled trust ledger or insolvency arrangement ledger, with a **separate ledger account in each ledger** for each matter dealt with where clients’ moneys or controlled trust moneys or non-controlled trust moneys or insolvency arrangement moneys are handled (see regulations 25(1)(b) and 13);
- A matter file for each matter, each containing **all documents** generated in the course of each such matter. This will include appropriate evidence of outlays disbursed out of moneys withdrawn from client account or disbursed from the office account and recouped from client moneys withdrawn from client account (regulation 13)⁴;
- A journal of amounts transferred from one ledger account to another ledger account or to an office ledger account or from an office ledger account to another ledger account, each entry therein to include a narrative explaining the transaction.

Many solicitors now maintain their accounting records in computerised form. While much of the terminology in the Regulations refers to manual accounting records, the principles are the same and requirements for manual records should be correctly and appropriately translated when applying them to computerised systems. For example the terminology used in regulation 25(1)(a) re ‘with separate principal money columns on each side’ of a cash book refers to the segregation of the manual cash book in columnar format when recording

⁴ The Society has indicated that solicitors are expected to maintain similar evidence of outlays disbursed from controlled trusts accounts, non-controlled trust accounts and insolvency arrangement accounts by virtue of the requirements in regulations 19, 20 and 24 respectively.

client/controlled trust/non-controlled trust/insolvency arrangement/office account moneys, which could be achieved on a computerised system.

Regulation 25 sets out the required 'minimum accounting records' to be maintained and kept by the solicitor, including:

- Cash book(s),
- Office ledger(s),
- Client ledger (s),
- Controlled trust ledger(s),
- Non-controlled trust ledger(s),
- Insolvency arrangement ledger(s),
- Bank lodgement records,
- Bank account register,
- Journals of transfers,
- Original paid cheques, cheque stubs or requisition docketts and copies of drafts obtained in connection with any matter,
- Matter files containing all documents generated in relation to each matter,
- Copies of bills of costs furnished in respect of all matters,
- Copies of balancing statements and office balancing statements; and
- Copies of reporting accountant's reports.

Accounting records have to be retained for at least six years.

Balancing statements

Regulation 13(8) requires a solicitor to prepare a 'balancing statement' at each balancing date comparing and balancing:

- The total of credit balances on the client ledger accounts, controlled trust ledger accounts and insolvency arrangement ledger accounts;
- The balance on the client ledger control account, controlled trust ledger control account and insolvency arrangement ledger control account; and
- The balance or balances of each client account, controlled trust account and insolvency arrangement account as appearing on up-to-date bank statements, as adjusted for outstanding lodgements and withdrawals.

As noted in Section 5 above, it is a breach of the Regulations for a **debit balance** to arise on any client ledger account, controlled trust ledger account or insolvency arrangement ledger account, **unless it is totally offset** by a credit balance arising on another client ledger account/controlled trust ledger account/ insolvency arrangement ledger account in respect of the same client within the client ledger/controlled trust/insolvency arrangement respectively.

The 'balancing dates' referred to above are:

- A date six months after the commencement of the accounting period in question; and
- The accounting date at the end of the accounting period in question.

The balancing statements should be prepared by the solicitor not later than two months after the balancing date. Regulation 13(8)(d) requires that solicitors prepare the balancing statements in the format of appendix 3 in the prescribed reporting accountant's report, as per the Second Schedule of the Regulations.

The aggregate of the balances in clients' bank accounts may exceed, but should never be less than, the total balances due to all of the solicitor's clients as shown by the client ledger accounts (for example, interest credited to the client bank account but not yet applied in accordance with Regulation 8).

Office balancing statements

Regulation 13(9) requires the preparation by a solicitor of an office balancing statement, not later than two months after the accounting date at the end of each accounting period. The office balancing statement compares and balances, as of the relevant accounting date:

- The balance on the office ledger control account: and
- The total of the debit and credit balances as extracted from the office side of the client ledger accounts⁵ (please see Appendix 2 of this Technical Release for an explanation of this term).

In effect, the office balancing statement reconciles the debtors control account with the list of debtors' balances extracted from the debtors' ledger. Preparation of the office balancing statement will also entail a review of the debtors' ledger for credit balances not matched by debit balances. Such credit balances need to be reported under appropriate headings in the reporting accountants report. See section 8.

In accordance with regulation 13(9)(c), the lists of all debit and credit balances arising on the office side of the client ledger accounts, and the office balancing statement, are provided by the solicitor to the reporting accountant in the format of appendix 5 in the prescribed reporting accountant's report, as per the Second Schedule of the Regulations.

⁵ We note that regulation 13(9)(a) and (b)(ii) mention the balances on the "office side of the client ledger account, controlled trust ledger account, and insolvency arrangement ledger account". For the purposes of checking compliance with these regulations and for the completion of appendix 5 of the reporting accountant's report, we understand the requirements apply to the definition of "office side of the client ledger account" per regulation 2, which incorporates the office side of a non-controlled trust ledger account.

7. Procedures

The Practice Consulting department at Chartered Accountants Ireland ('the Institute') has developed a Solicitors Accounts Regulations work programme (the 'SARs work programme') which may be of assistance to reporting accountants in planning and carrying out their examination and reporting under the Regulations.

Examination steps per Regulation 28

Regulation 28 contains the specific procedures the reporting accountant is required by the Regulations to undertake. Regulation 28(2) sets out the 13 steps required for examining the solicitor's compliance with the requirements for client accounts, while regulation 28(3) deals with the examination of the solicitor's compliance with the requirements for controlled trusts, non-controlled trusts and insolvency arrangements⁶.

These steps are designed to allow the reporting accountant to express the required opinion regarding the solicitors compliance with the Regulations.

The work required in reporting under the Regulations is extensive. However, it does not amount to an audit of the solicitor's accounts. As such the International Standards on Auditing (UK & Ireland) issued by the FRC do not apply to these engagements, although as mentioned elsewhere in this Technical Release they may provide useful guidance to reporting accountants in specific circumstances.

The scope and extent of the reporting accountant's tests will be determined having regard both to the requirements of Regulation 28 and the particular circumstances of the individual solicitors firm. The nature of the evidence will be a matter for professional judgment. In determining the extent of his or her work the reporting accountant will examine transactions from different aspects, for example, transactions selected from ledger accounts, bank statements and files.

The reporting accountant considers the quality of the documentation used to vouch the transactions and obtains sufficient documentation evidencing transactions (such as original third party correspondence or documentation, or other reliable evidence). When testing the sample of transactions chosen, the reporting accountant is alert to the possibility of matters such as:

- Transactions being recorded in the incorrect ledger account;
- Client debit and office credit balances occurring throughout the year but not evident at the reporting date;
- Withdrawals from or lodgements to client account purportedly in relation to a particular client/matter, but the evidence tested indicates otherwise (i.e. in relation to a different client or for a different matter);

⁶ A new step, ct2, was added by the Regulations in this regard, as this has not been specified in previous regulations.

- Lodging client moneys to office bank accounts;
- Large round sums being transferred from the client account to the office account for a purpose which may not be in compliance with the regulations;
- The nature of the particular transaction being vouched appears inconsistent with the specific matter or the services generally provided by the solicitor, based on the reporting accountant's knowledge of the solicitor's business.

Members should obtain in writing "material representations" made to them by a solicitor and accepted in pursuance of the examination under Regulation 28. Reporting accountants may find the guidance in ISA (UK and Ireland) 580 Written representations useful in this regard.

If the explanations of any differences arising on the balancing statements are reasonable the reporting accountant need not check them in detail. The reporting accountant will check that corrections arising out of the balancing statements, where occurring, were made immediately. Such tests will also assist the reporting accountant to determine whether the balancing statements were carried out within the stipulated two month period.

When carrying out the examination, if it appears to the reporting accountant that "there is evidence that these Regulations have not been complied with" the reporting accountant should make the necessary further examination so as to be able to complete his or her report with or without qualification.

Regulation 28(4) clarifies that the reporting accountant is not required to extend the examination:

- Wider than that which "should be ascertainable from the solicitor's accounting records...supplemented by such information and explanations as the reporting accountant may obtain from the solicitor or the solicitor's bank or banks"; or
- To enquiries concerning documents of title or stock exchange or other securities held by the solicitor on behalf of clients, controlled trusts, non-controlled trusts or insolvency arrangements; or
- To enquiries concerning compliance with the PIA 2012 and the S.I. No. 247 of 2013.

Examination of solicitor's compliance with regulation 8 on interest

As discussed in the introduction section to this Technical Release, whilst the requirements on how solicitors are required to handle and account for interest have not changed significantly, reporting accountants will note that solicitor's compliance with the requirements in regulation 8 on Interest is likely to necessitate more detailed testing than under the previous regulations. The steps in regulation 28, however, do not explicitly address an examination of compliance with the requirements to account for interest.

The above mentioned SARs work programme includes suggested tests in carrying out the examination of a solicitor's compliance with the requirements regarding interest. A number of important points to take into account when examining compliance with the interest requirements include:

- Understanding how the solicitor accounts for, and records, interest due in relation to client moneys, controlled trust moneys, non-controlled trust moneys and insolvency arrangement moneys.
- Identifying matters where the solicitor and the client have made an agreement in writing regarding the application of client moneys received or interest thereon.
- The examination will have to consider interest bearing dedicated accounts, interest bearing general accounts and non-interest bearing accounts.

- Interest credited to dedicated accounts is treated as additional client/controlled trust/non-controlled trust/insolvency arrangement moneys. The reporting accountant's examination does not extend to testing the quantum of interest credited by the bank to these accounts.
- Where a solicitor holds client moneys, controlled trust moneys, or insolvency arrangement moneys in a non-interest bearing account, the solicitor has the same obligation to account for interest on those moneys, as if they were held in an interest bearing account (regulation 8(4)).
- Solicitors are required by regulation 8(2)(b) to account for all interest in excess of €100, on moneys which are held in general (non-dedicated) accounts, or in non-interest bearing dedicated accounts, which would have been earned had the moneys been held in an interest bearing dedicated account of the solicitor's choosing at the (principal) bank to the solicitors firm. Nothing in the Regulations prevents the solicitor from accounting to individual clients for interest amounts of less than €100.
- Having calculated interest amounts due to clients, solicitors are required to ensure that any remaining balance of interest received is not kept in interest bearing general client accounts for longer than three months after the date on which the interest has been credited by the bank to the account or by the next accounting date, whichever is later. The regulations are not definitive on how solicitors deal with interest amounts under €100 arising on the general client account and as such it would seem that the solicitor may either transfer such interest to their office account or credit it to the individual client.
- For interest bearing general accounts regulation 8 requires that the accounting for interest to clients is undertaken within three months as outlined above. However for non-interest bearing accounts the Regulations don't state when the accounting for interest to clients is to be undertaken, albeit accounting for interest in excess of €100 is required. Reporting accountants obtain an understanding of how the solicitor complies in this regard.

Other issues to consider in undertaking the examination

Sample sizes

Whilst regulation 28 sets out the required steps, it does not address sample sizes, apart from references to carrying out various 'test checks'.

Sample sizes are established based on the reporting accountant's professional judgement of the risks associated with different aspects of the solicitor's business activities and the potential for non-compliance with various regulations.

The reporting accountant's work in understanding the solicitor's accounting systems and testing control systems in place will inform the reporting accountant's assessment as to how much reliance can be placed on those systems and controls and will be considered in terms of the reporting accountant's judgement as to the sample sizes required.

The quality of the information/documentation being provided is another relevant factor, as is the timeliness with which information/documentation is provided.

The reporting accountant ensures that the sample is sufficient to test all types of transactions and the full period of the Reporting Accountants Report.

Results of testing may cause the reporting accountant to increase sample sizes or indeed

extend procedures to address the issues identified. For example, the identification of a significant number of transfers between ledger accounts may indicate to the reporting accountant that this is an area of heightened risk requiring higher sample sizes and/or additional procedures. The identification of unusual issues/transactions, compared with the reporting accountant's knowledge of the solicitors firm, may also trigger a heightened focus on such issues/transactions.

8. Reporting accountant's report

Regulation 26 requires the solicitor to forward a reporting accountant's report ("the report") to the Society within six months of the solicitor's accounting date. The standard form on which the report is made is contained in the Second Schedule to the Regulations. The format of the report may change over time and reporting accountants should ensure that they have the correct format for the particular accounting period. The comments in this Technical Release on the Reporting Accountants Report relate to the format included in the Second Schedule to the Regulations.

Appendix 6 of the prescribed report in the Second Schedule gives some general instructions on completing the report, which should be read before starting.

Part II of the report sets out the respective responsibilities of the solicitor and of the reporting accountant. The solicitor is responsible for complying with the Regulations and the reporting accountant must form an opinion, based on the examination, carried out in accordance with regulation 28 (see section 7 above) on the solicitor's compliance with:

- Part II (Client account and office account),
- Part IIIA (Controlled trusts),
- Part IIIB (Non-controlled trusts) and
- Part IIIC (Insolvency arrangements) of the Regulations.

The requirements of Part IV of the Regulations dealing with the minimum accounting records to be maintained by the solicitor are not within the scope of the reporting accountant's opinion. Breaches of these requirements are not reported in Appendix 2 of the report unless they constitute a breach of another regulation within the scope of the reporting accountant's opinion. For example, members will note that there is some overlap between the minimum accounting records required to be maintained by regulation 25 (in Part IV) and those required by other regulations e.g. regulation 13 (*'Books of account to be maintained by solicitor'*), which is in Part II.

In order to form the opinion, the reporting accountant is required to:

"carry out such tests, on a sample basis, as he/she considers necessary in accordance with regulation 28 of the Regulations, and in accordance with the relevant guidance issued by the relevant professional accountancy body of which the reporting accountant is a member, based upon accounting records, information and explanations supplied to the Reporting Accountant by the solicitor concerned" (see Part II of the report)⁷.

⁷ For members of Chartered Accountants Ireland, the reference to 'relevant guidance' here can be taken as meaning this Technical Release, as amended from time to time. In addition, the SARs work programme may assist members in carrying out their work in accordance with regulation 28.

Regarding compliance with Part III(A), Part III(B) and Part III(C) of the Regulations, the Society has stated that the reporting accountants report should not be read as including confirmation that the payments made from controlled trust moneys, non-controlled trust moneys or insolvency arrangement moneys had been made in accordance with the implicit terms of the controlled trust deed, non-controlled trust deed or insolvency arrangement respectively.

The reporting accountant signs the opinion in Part II, referring as required to any exceptions, and to the information, laid out in the various appendices to the report.

The information required in Part II (3) of the opinion will be obtained by the reporting accountant from the work carried out under regulation 28(2), step 6 and regulation 28(3), step 2 and should align with the information in Appendix 4⁸. Where the figures noted in Part II (3) do not reconcile and differences arise, the Report must specify the amount the solicitor has paid into/withdrawn from client account and/or controlled trust account and/or insolvency arrangement account following discovery of such differences. The reporting accountant merely confirms that a specified amount has been lodged or withdrawn. He or she is not required to express an opinion as to whether that is the appropriate amount to correct the differences that have arisen.

In **Part III** of the report, the reporting accountant must confirm his or her qualification under the regulations to give the report, that at least the minimum level of professional indemnity insurance cover specified by the Society is held by the reporting accountant, and that the reporting accountant will furnish a copy of the report to the solicitors practice concerned.

Part IV of the report includes a '**Form of Acknowledgement**', which is an acknowledgement by the solicitors of their obligations under the Regulations, and their awareness and understanding of the format and contents of the Report and discussions of same with the reporting accountant. This must be signed by the sole practitioner solicitor or the solicitor's compliance partner (where a firm of solicitors has two or more partners they are obliged to appoint a compliance partner, who signs the form of acknowledgement). Regulation 30(4) requires that in the event of there being a change in the compliance partner in the course of the accounting period for the solicitors practice concerned, the Form of Acknowledgement in respect of that accounting period shall, unless the circumstances in the opinion of the Society otherwise require, be signed by both the outgoing compliance partner and the incoming compliance partner, and in so signing, each specifying the period during that accounting period that he/she was the compliance partner.

Appendix 1 of the report – limitation in scope

The reporting accountant discloses, in **Appendix 1** to the report, details of, and reasons for, any matter about which the reporting accountant has been unable to satisfy himself or herself. An example of a matter that may appear here would be if the reporting accountant

⁸ Normally, one would expect the figures included in the opinion to also agree to the relevant figures in appendix 3.

was unable to obtain documentation to vouch a particular transaction to his/her satisfaction.

Appendix 2 of the report - breaches

Details of any matters, “other than trivial breaches due to minor clerical errors or mistakes in accounts-keeping”, coming to the reporting accountant's attention in respect of which, in the reporting accountant's opinion, the solicitor has not complied with one or more relevant provisions of the Regulations must be disclosed in **appendix 2** to the Report.

Trivial breaches of the Regulations due to ‘minor clerical errors or mistakes in accounts keeping’ need not be disclosed. There is an exception made, however, in that all breaches required to be disclosed in appendix 4 to the report, whether trivial or not, must be included therein (see note below on appendix 4 to the Report).

Although a breach may be immaterial in the context of the accounting records examined, the immateriality does not necessarily render it trivial. A breach of the fundamental principles of the Regulations - for example, lodging client's moneys to office account, withdrawing an amount from client account in excess of the amount held for that particular client - could not be classified as trivial.

Whether clerical errors or mistakes in book-keeping may be regarded as trivial breaches will depend not only on the individual amounts involved, but also on the nature of the breaches. Therefore, for a breach to be classified as trivial, the reporting accountant must be satisfied that the breach:

- a. was trivial in amount; and
- b. was due to a clerical error or a mistake in book-keeping; and
- c. was not due to an error of principle; and
- d. was rectified on discovery; and
- e. did not result in loss to any client.

In determining whether a breach is trivial the reporting accountant also considers the frequency of occurrence.

Appendix 3 to the report – balancing statement

Appendix 3 to the report contains information **extracted** from the solicitor's accounting records in relation to the client account and, where applicable, the controlled trust account and the insolvency arrangement account balancing statements. Under regulation 13(8), a solicitor is required to prepare two balancing statements with respect to an accounting period, which are to cover client accounts, controlled trust accounts and insolvency arrangement accounts as appropriate. The balancing statements are prepared as of the date six months after the commencement of the relevant accounting period and as of the end of that accounting period and must be completed within two months of the respective balancing dates. Members will note that the information required in Appendix 3 of the Report in the Second Schedule to the Regulations is more detailed than in previous versions

of reporting accountants reports, and that regulation 13(8)(d) requires the balancing statement prepared by the solicitor at the balancing dates to be in the prescribed format.

Appendix 4 to the report – explanation of differences arising

Differences arising in part II(3) of the opinion are to be explained in appendix 4 insofar as could be established by the reporting accountant from the examination carried out by him as provided for in regulations 28 and 29. Where the reporting accountant is relying on the solicitor's explanations of differences, the reporting accountant reviews those explanations for reasonableness. If a trivial breach affects this reconciliation it must be reported, and is not subject to the same exemption noted in relation to appendix 2 (see above).

Appendix 5 to the report – office balancing statement

Appendix 5 to the Report, based on information extracted from the accounting records, reproduces details from the office balancing statement carried out by the solicitor as of the accounting date. It requires details of the balance on the office ledger control account at the period end (a), along with the total of the debit and credit balances on the office ledger (office side of client ledger accounts)(b) (see Appendix 2 of this TR 01/2016). These figures should reconcile. The credit balances included in the list of balances at (b), which are not capable of being offset against debit balances (credit balances can only be offset against debit balances where allowed under the Regulations) are required at (c) and the reasons for why the credit balances arose are required in section (d).

Members will note that there are some small **typographical errors** in the Report, for example, in Appendix 3 (b)(i) 'credit' instead of 'client', however these are minor (and obvious) and shouldn't cause the reporting accountant any difficulty.

The **completed reporting accountant's report** is to be sent directly by the reporting accountant to the Registrar of Solicitors, Law Society of Ireland, Blackhall Place, Dublin 7, accompanied by a covering letter on the reporting accountant's headed notepaper. The reporting accountant gives the solicitor's practice concerned a copy of his or her Report at the same time.

Regulation 31 requires a solicitor with **two or more places of business** to provide the Society with one Report covering all locations on a combined basis. Each place of business shall have the same accounting date. In the case of **associate** firms, the report for each firm must be prepared to the same accounting date by the same reporting accountant.

Solicitor's duty to furnish documents to reporting accountant

Regulation 29(1) obliges the solicitor to produce any document which the "reporting accountant considers necessary to inspect for the purposes of the reporting accountants examination".

Regulation 29(3) states that where a solicitor declines to make available such document or documents as requested by the reporting accountant, in whole or in part, then the reporting accountant

- qualifies the report;
- sets out the extent, if any, of compliance by the solicitor with the request;
- specifies the extent to which the solicitor has declined to produce a document(s) on the grounds of confidentiality in express reliance on regulations 29(2); and
- specifies to what extent the document or documents provided fall short of that

considered by the reporting accountant to be necessary and reasonable for the reporting accountant to vouch one or more receipts or payments.

Other reporting considerations

The Regulations do not place any obligation on an accountant, engaged to prepare a reporting accountant's report under the Regulations, to bring breaches to the attention of the Law Society other than in the prescribed reporting accountant's report under the regulations⁹.

However, in considering breaches and other reportable matters identified in the course of the engagement, the reporting accountant takes into account the obligation to report under other statutory requirements, as set out in section 9 of this Technical Release. Such additional statutory reports are normally required to be made without delay and therefore a matter may be reported to the relevant authority before the reporting accountant's report is submitted under the regulations. Should this be the case the reporting accountant may wish to consider whether it is appropriate to bring the matter to the attention of the Law Society prior to completing the reporting accountant's report under the regulations.

Additionally, the reporting accountant may become aware of a breach or other matter which the reporting accountant considers does not give rise to a statutory duty to report but may have public interest implications. In either circumstance, given that such a report to the Law Society is not made under a statutory duty to report, and is therefore not subject to any legal protection against liability for breach of contract or confidentiality, the accountant may consider it appropriate to seek independent legal advice as to whether to bring the matter to the attention of the Law Society prior to making the reporting accountant's report under the regulations.

⁹ Reporting under Part VI of the Regulations is, as noted in section 11 of this Technical Release, a separate engagement.

9. Other reporting obligations

Professional accountants are aware of the various third party reporting obligations to which they are subject by virtue of the accounting services they provide. The primary reporting responsibilities that may arise with regard to an engagement under the Regulations are:

- In accordance with section 42 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (see Miscellaneous Technical Statement M42 Anti-Money Laundering – Republic of Ireland for guidance);
- In accordance with section 59 of the Criminal Justice (Theft and Fraud Offences) Act 2001; and
- In accordance with section 19 of the Criminal Justice Act 2011.

10. Engagement documentation

Reporting accountants are not specifically required by the Regulations to maintain documents generated or information received in the course of the engagement. However, a reporting accountant will need to maintain working papers on the engagement sufficient to demonstrate the adequacy of work performed.

The amount and type of documentation maintained will depend on the documentation policies of the reporting accountant, the complexity of the solicitor's business and areas of practice and the opinion provided in the reporting accountant's report.

The documentation kept on the engagement file will need to support the reporting accountant's opinion.

Types of documentation to be considered for inclusion in the working papers:

- Documentation of independence considerations;
- Signed engagement letter;
- Evidence of AML procedures;
- Planning and scheduling;
- List of partners and copies of practising certificates;
- Copy of the bank register;
- Law society correspondence;
- Evidence of testing in accordance with regulation 28;
- Written representations from the solicitor;
- External confirmations, e.g. bank confirmations;
- Evidence of breaches identified, whether reported or judged trivial by the reporting accountant;
- Copies of balancing statements and office balancing statements relevant to the reporting accountant's report;
- Copy of the signed reporting accountant's report;
- Documentation regarding matters reported to authorities other than the Law Society, where relevant.

This above list is not exhaustive and reporting accountants should tailor their documentation to the circumstances of the engagement and their own internal procedures.

11. Regulation 36 – requirement to furnish accounting statement or report

Regulation 35 governs the authority of the Society to require an investigation of a solicitor's compliance with the regulations by an 'authorised person'. Such an authorised person can require the solicitor to:

- Make available all or any part of the solicitor's accounting records for inspection;
- Furnish copies of the accounting records as deemed necessary;
- Provide written authority to enable the authorised person to inspect any bank accounts of, or bank accounts opened or caused to be opened by, the solicitor, and to obtain copies of documents relating to such bank accounts as deemed necessary.

Under regulation 36, the Society may require a solicitor (or controlling trustee, non-controlling trustee or personal insolvency practitioner) to provide an "accounting statement" for a period of not more than six months expiring on the date of the notice, showing, in summary form, up-to-date balances, and relevant reconciliations, of all clients' moneys, controlled trust moneys, non-controlled trust moneys and insolvency arrangement moneys received, held controlled and due in respect of all or specified matters, as well as details of how and where such moneys are held at the date of the accounting statement.

Under regulation 36(3), the Society may also require a report by the solicitor's reporting accountant, either in addition to or in lieu of the accounting statement. This report may refer to specified matters or to all matters and involves the reporting accountant opining on whether the accounting records of the solicitor have been properly maintained and kept and whether they "duly record the true financial position of the solicitors towards each client concerned" as of the date of the report.

Such work under Part VI of the Regulations is not part of the general examination carried out under the Regulations for the purposes of the Reporting Accountants Report. It is a different engagement and should be the subject of separate engagement terms, and it is not dealt with in this Technical Release.

Appendix 1

Accompanying notice issued by the Law Society when issuing the Solicitors Accounts Regulations 2014

“New consolidated solicitors accounts regulations will come in force on 1 December 2014. There are no fundamental changes to the existing regulations.

On 7 November 2014 the Council of the Law Society approved the Solicitors Accounts Regulations 2014. The regulations come into operation on the 1 December 2014. The statutory instrument may be viewed here¹⁰.

Previously, regulations relating to solicitors’ accounting records were set out in the following five statutory instruments:

- Solicitors Accounts Regulations 2001
- Solicitors (Interest on Clients’ Moneys) Regulations 2004
- Solicitor Accounts (Amendment) Regulations 2005
- Solicitors Accounts (Amendment) Regulations 2006
- Solicitors Accounts (Amendment) Regulations 2013

The Law Society is introducing one statutory instrument to deal with all the solicitors accounts regulations. There are no fundamental changes to provisions of the existing solicitors accounts regulations.

Definitions

Some additional definitions and amendments to existing definitions have been introduced to include the definition of “matter,” client ledger account”, “controlled trust ledger account”, “deposit account”, “non-controlled trust ledger account”, “insolvency arrangement ledger account”, “office account” and “office side of the client ledger account”.

Personal Insolvency Act 2012

In circumstances where there is a conflict in the terms of the provisions of the Personal Insolvency Act and the Solicitors Accounts Regulations, the Personal Insolvency Act 2012 takes precedence.

Interest on client moneys

The regulations on interest on client moneys are now contained as one regulation within the Solicitors Accounts Regulations 2014. The regulation has been re-drafted. There is no change to solicitors’ obligations in relation to interest on client moneys.

¹⁰ www.lawsociety.ie

Balancing statements

The regulations have been changed to require solicitors to include information in relation to control trusts and insolvency arrangement accounts in the balancing statements that they are required to prepare.

Controlled trusts

For the avoidance of doubt, it is a breach of the regulations for a debit balance to arise on a controlled trust ledger account and for a solicitor to discharge personal or office expenditure from a controlled trust account.

Non-Controlled trusts

For the avoidance of doubt, it is a breach of the regulations for a solicitor to discharge personal or office expenditure from a non-controlled trust account.

Insolvency arrangements

For the avoidance of doubt, it is a breach of the regulations for a debit balance to arise on an insolvency arrangement ledger account and for a solicitor to discharge personal or office expenditure from an insolvency arrangement account.

Solicitors are specifically required to maintain a record of lodgements to insolvency arrangement accounts. The bank account register must include a record of all insolvency arrangement accounts. Solicitors are also required to obtain returned paid cheques and copies of bank drafts in relation to insolvency arrangement accounts.

Reporting accountants

All reporting accountants must be approved by the Law Society.

The reporting accountant is required to check the extraction of balances on controlled trust ledger accounts and insolvency arrangement ledger accounts.

The layout of the reporting accountant's report has been amended to specifically require information in relation to controlled trusts and insolvency arrangements.

With regard to interest on client moneys, a provision under the Solicitors (Interest on Clients' Moneys) Regulations 2004 under which the reporting accountants were not required to carry out examinations as to whether a solicitor had complied with those regulations is excluded.

The reporting accountant is not required to extend his or her examination to enquiries concerning the solicitor's compliance with the provisions of the Personal Insolvency Act 2012 and the Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013.

Transitional arrangements

The Solicitors Accounts Regulations 2001 to 2013 remain in full force in respect of any accounting period that has commenced before 1 December 2014 until such time as the solicitor has duly complied with those regulations as regards the furnishing to the Law Society of a reporting accountant's report for such accounting period."

Appendix 2

Explanation of 'Office side of the client ledger account' and 'office ledger' in the Regulations

'Office side of the client ledger account' is defined in the regulations as follows:

“**office side of the client ledger account**” refers to the record of financial transactions conducted by a solicitor in respect of each matter on office account and for the avoidance of doubt, reference to the “office side of the client ledger account” incorporates, where appropriate, office side of the controlled trust ledger account, office side of the non-controlled trust ledger account and office side of the insolvency arrangement ledger account;”

Office side of the client ledger, referred to as the "office ledger", includes:

- (i) Debtors of the firm (billed but outstanding fees, disbursements, outlays and VAT);
- (ii) Anticipated disbursements and outlays (billed but yet to be discharged); and
- (iii) Disbursements already discharged.

Effectively, the office side of the client ledger account/office ledger account is a debtor's ledger account, in the solicitor's debtors' ledger (office side of the client ledger /office ledger), for a particular client, controlled trust, non-controlled trust or insolvency arrangement, with which the solicitor is dealing. The office side of the client ledger, or debtors ledger, should therefore always deal with the business of the solicitor or disbursements.

So, as with normal debtors, when the solicitor raises an invoice/bill of costs for a client/controlled trust/non-controlled trust/insolvency arrangement (e.g. a client called John Smith), the professional fees are posted as a debit to the office side of the client ledger account for John Smith, i.e. John Smith's account in the debtors ledger. Likewise, a receipt of monies into the office bank account as payment for these fees is treated as a credit on the individual's account in the debtors ledger.

Disbursements/outlays

The payment of outlay for a client is a transaction which is particular to the business of a solicitor and may not commonly arise in other business sectors. If the solicitor pays outlay, e.g. land commission fees from his own office bank account for a client, and that outlay is recoverable from the client, this is posted as a debit to the office side of the client ledger account for that client. It is then recouped from the client at a later stage.

However, in some instances in practice, the solicitor may post the anticipated disbursement/outlay, included in a bill of costs or invoice, as a debit to the office side of the client ledger account for that client **before** it is disbursed (i.e. a debit to the debtors ledger account), and post the credit to office accruals. When the outlay is subsequently paid from the office account, a credit is posted to the office bank account and a debit is posted to the office accruals account.

In this situation, before the outlay is actually disbursed, there is a potential risk that, because there is a debit balance showing on the debtor's ledger account, moneys received from the client may be lodged to the office account and credited to the debtor's ledger account, rather than being treated as additional client moneys in accordance with regulation 4(2) and being correctly lodged to the client account and credited to the client ledger account.

This situation could also arise if the solicitor receives money from a client in advance to pay expected outlay and lodges this to the office bank account in error.

In both instances, the moneys received should have been lodged to the client bank account as the outlay had not been paid at the time the moneys were received from the client, and this will give rise to a credit balance on the office side of the client ledger account for that client. This credit balance represents a breach of the Regulations. Also, if it is not rectified in accordance with regulation (11(5) "without delay", this is a further breach.

An '**office ledger account**' is defined as meaning

'... that part of the books of account of a solicitor which, in accordance with Regulation 25(1)(b), records in respect of each matter the financial transactions conducted by the solicitor on office account;'

Effectively therefore it is the same as the office side of the client ledger account for a client.

The '**office ledger**' is the term used to describe collectively all of the 'office ledger account' (or 'office side of the client ledger account') balances together. The solicitor is required (under regulation 25), to have a separate account in the office ledger for all matters dealt with where clients' moneys or controlled trusts' moneys or non-controlled trusts' moneys or insolvency arrangements' moneys are handled.