

## Information for Clients

Set out below is the information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("Law Society Rules").

### Fees

Subject to any arrangements set out in any engagement letter, the factors we will take into account in determining the fees we will charge and when payment of fees is to be made are set out in our Standard Terms of Engagement.

### Professional Indemnity Insurance

We hold professional indemnity insurance that exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.

### Lawyers' Fidelity Fund

The Law Society maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. Except in certain circumstances specified in the Lawyers and Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

### Complaints

We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

If you have a complaint about our services or charges, you may refer your complaint to the partner in our firm who has overall responsibility for your work.

If you do not wish to refer your complaint to that partner, or you are not satisfied with that partner's response to your complaint, you may refer your complaint to the team leader of the responsible partner, through our Managing Partner. Our Managing Partner may be contacted as follows:

- by letter at Private Bag 92093, Auckland 1142;
- by email at [Nick.Gillies@heskethenry.co.nz](mailto:Nick.Gillies@heskethenry.co.nz);
- by telephone on (09) 375 8700.

The Law Society also maintains a complaints service and you are able to make a complaint to that service. Please phone 0800 261 801 and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

### Persons Responsible for Your Work

The names and status of the person or persons who will carry out or be responsible for the services we provide for you are set out in our letter of engagement.

### Client Care and Service

As required by the Law Society Rules, in providing our services we will:

- act competently, in a timely way, and in accordance with instructions received and arrangements made;
- protect and promote your interests and act for you free from compromising influences or loyalties;
- discuss with you your objectives and how they should best be achieved;
- provide you with information about the work to be done, who will do it and the way the services will be provided;
- charge you a fee that is fair and reasonable and let you know how and when you will be billed;
- give you clear information and advice;
- protect your privacy and ensure appropriate confidentiality;
- treat you fairly, respectfully and without discrimination;
- keep you informed about the work being done and advise you when it is completed; and
- let you know how to make a complaint and deal with any complaint promptly and fairly.

The obligations lawyers owe to clients are described in the Law Society Rules. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.

If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801.

## Standard Terms of Engagement

These Standard Terms of Engagement ("Terms") apply in respect of all work carried out by us for you, except to the extent that we otherwise agree with you in writing. If you have any questions, please contact the partner responsible for your work.

### 1. Scope of Services

- 1.1 The legal services which we are to provide for you as your lawyers are outlined in our engagement letter. We are only qualified to advise on New Zealand law. If we assist you on matters governed by foreign law, we do so on the basis that we do not accept any responsibility in relation to your position under that foreign law, whether or not we have obtained foreign law advice on your behalf.
- 1.2 We are not qualified to provide, and will not provide, investment advice, tax advice, or advice on insurance products to you. We will, if you so request, assist you in obtaining such advice.
- 1.3 Unless we agree to do so in writing, we will not:
- remind you about dates (e.g. PPSR, lease or consent expiry dates); or
  - update advice after it is given.
- 1.4 You agree that when we act for you, we can accept instructions from any of the following unless you expressly advise us otherwise in writing:
- if we act for a company, we can accept instructions from any director or officer of that company or any employee or other person whom you have authorised to work with us;
  - if we act for a trust, we can accept instructions from any trustee or officer (if applicable) of that trust;
  - if we act for a partnership we can accept any instructions from any partner or officer (if applicable) of that partnership;
  - if we act for a couple in a transaction, we can accept instructions from either party;
  - if you are a body corporate or incorporated society, we can accept instructions from any person holding themselves out as being authorised by the body corporate or society to instruct us.
- 1.5 Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this in writing.
- 1.6 We may carry out reasonable credit checks. You authorise anyone we contact to provide us with information we request as part of our credit enquiries.

### 2. Financial

- 2.1 We will charge a fee which is reasonable for the services provided to you. Unless we agree with you otherwise, our fees will be calculated based on the time we spend on a job at our hourly rates, and adjusted where appropriate for other factors permitted by the Law Society Rules such as:
- the time and labour expended;
  - the skill, specialised knowledge and responsibility required to perform the services properly;
  - the importance of the matter to you and the results achieved;

- the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
  - the degree of risk assumed by us in undertaking the services including the amount or value of any property involved;
  - the complexity of the matter and the difficulty or novelty of the questions involved;
  - the experience, reputation and ability of the lawyer;
  - the possibility that the acceptance of the particular retainer will preclude our engagement by other clients;
  - whether the fee is fixed or conditional (whether in litigation or otherwise);
  - any quote or estimate of fees given by us;
  - any fee agreement (including a conditional fee agreement) entered into between you and us;
  - the reasonable costs of running our practice; and
  - the fee customarily charged in the market and locality for similar legal services.
- 2.2 If requested, we will provide an estimate of the likely fees. However, this will be a guide only and not a fixed quotation, unless specifically agreed otherwise in our Letter of Engagement. Where we believe that an estimate is likely to be materially exceeded, we will endeavour to advise you and provide you with an updated estimate.
- 2.3 We review our hourly charge-out rates on an annual basis. Following this annual review, we may amend the hourly rates that we included (if any) in our original Letter of Engagement without further communication with you.
- 2.4 Some instructions may not be completed for reasons beyond our control. If that occurs, you will be liable to pay us for the work undertaken and costs incurred up to the time of termination.

#### Disbursements and Expenses

- 2.5 In providing services we may incur disbursements or have to make payments to third parties on your behalf. You authorise us to incur these expenses. These will be included in our invoice(s) to you. We may require an advance payment for disbursements or expenses that we incur on your behalf.
- 2.6 We will also include an administration fee in our invoice(s) to you. This fee will be equivalent to 2.5% of the value of our legal fees and is to cover office expenses such as photocopying, printing, telephone calls, digital and physical file storage, and the use of electronic forms and precedents.

#### GST (if any)

- 2.7 Goods and services tax (GST) is payable by you on our fees and charges at the rate prescribed by the Goods and Services Tax Act 1985, except where you are zero rated or exempt. Unless we state otherwise, our fees, estimates and hourly rates do not include GST or office expenses and disbursements, which are payable by you.

### **Payment**

- 2.8 We will send interim invoices to you, usually monthly and on completion of the matter or termination of our engagement. We may also send you an invoice when we incur a significant expense.
- 2.9 Payment is due by the 20th of the month following the date of our invoice.
- 2.10 We may deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.
- 2.11 We may charge you interest at the rate of 10% per annum (calculated on a daily basis and charged monthly) on any amount remaining unpaid after the due date for payment. If an invoice remains unpaid, we reserve the right to commence proceedings to recover the overdue amount and charge you the cost of that recovery plus interest at the rate noted above, cease to act for you and retain your files until the overdue amount is paid. We may also require an additional payment of fees in advance or other security before commencing work again.

### **Security**

- 2.12 We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. We may cease or delay performance of our services until the requested pre-payment or security has been received. You authorise us:

- (a) to debit against amounts pre-paid by you; and
- (b) to deduct from any funds held on your behalf in our trust account,

any fees, expenses or disbursements for which we have provided an invoice.

### **Third Parties**

- 2.13 Although you may expect to be reimbursed by a third party for our fees and expenses, nevertheless you remain responsible for payment to us if the third party fails to pay us.
- 2.14 If the third party has not paid us within the time frames set out in these Terms for payment, we reserve the right to issue you an invoice for the outstanding amount. You must then pay the invoice in accordance with these Terms and seek reimbursement from the third party.

## **3. Limitation of Liability**

- 3.1 To the extent permitted by law, you may not make or pursue any claim against us unless you give us written notice containing reasonable details of any actual or probable claim, and such notice is received by us within 3 years from the date of work undertaken to which the claim relates.
- 3.2 We limit our liability to you. For any matter (or series of related matters) the maximum aggregate amount that we will have to pay you will not exceed (1) NZ\$17.1 million if an amount is available to be paid out under our relevant insurance policies in respect of our liability to you and (2) in any other case, an amount equal to 5 times our paid fees in the previous 12 months (excluding disbursements and GST) in respect of the matter (or series of related matters) up to a maximum of NZ\$2.0 million.
- 3.3 We will not have to pay you more than the maximum aggregate amounts described in 3.2 above for anything caused by or resulting from anything we do or do not do, or delay in doing, whether or not it is contemplated or authorised by any agreement with you.

- 3.4 The limit in clause 3.2 applies to the extent permitted by law, whatever you are claiming for, and however liability arises or might arise if not for this clause (whether in contract, tort (including negligence), equity, or otherwise).
- 3.5 If you are more than one person (such as a couple or partnership), this maximum is the maximum combined amount that we will have to pay you together.
- 3.6 If you engage us to do work for the purposes of a business, you agree the Consumer Guarantees Act does not apply. Otherwise, nothing in this clause 3 limits any rights you may have under the Consumer Guarantees Act.
- 3.7 We shall not be liable for any loss or liability caused or contributed to by inaccurate or incomplete information supplied by you, your agents or third parties (including public records and expert witnesses) or because you did not receive or read a communication we sent you.

## **4. Verifying Your Identity and Source of Funds**

- 4.1 You authorise us to collect information about you (including customer due diligence) to obtain, exchange, hold, and use such information, and to make any other enquiries we think appropriate to:
- (a) confirm information provided to us about you is true;
  - (b) undertake initial and on-going customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT Act);
  - (c) comply with other legal obligations we may have.
- 4.2 You authorise any person to disclose information to us in response to such enquiries.
- 4.3 You accept that we may use customer due diligence services (including electronic based services from a third party) to verify your identity and conduct other customer due diligence or monitoring required under the AML/CFT Act and that when we use such services:
- (a) the other third party (service provider) will exchange information about you for that purpose and the service provider may hold information on its system and use it to provide their customer due diligence service to their other customers;
  - (b) we may use the service provider's services in the future for any authorised purpose (including in relation to ongoing customer due diligence). This may include using the service provider's monitoring services to receive updates if information held about you changes.

## **5. Confidentiality**

- 5.1 We will not disclose your confidential information to another client nor will we disclose another client's confidential information to you.
- 5.2 If we hold funds on deposit for you, you agree that we may provide any information we hold relating to your United States Foreign Account Tax Compliance Act (FATCA) or Common Reporting Standard (CRS) status, or other FATCA or CRS matters, to the New Zealand Inland Revenue Department (IRD) and to our banks if they request information to be able to meet their FATCA or CRS obligations. If you do not provide any such information we request, you agree we may report your non-response, identity, and reportable balance to our banks and the IRD (which will in turn pass this information to the relevant foreign tax authority). Please ask us if you would like more information about FATCA or CRS.

## **6. Termination**

- 6.1 You may terminate our retainer at any time and we may terminate it in the circumstances permitted by the Law Society Rules.
- 6.2 If our retainer is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

## **7. Retention of Files and Documents**

- 7.1 Your files and documents will be held in either electronic or paper form. You authorise us (without further reference to you) to destroy all files and documents in respect of your matter 7 years after our engagement ends (other than any documents that we agree to hold in safe custody for you). We may make and retain, at our cost, copies of documents which we deliver to you or another lawyer.

## **8. Artificial Intelligence**

- 8.1 We may utilise artificial intelligence (AI) systems and tools in the course of providing services to you.

## **9. Conflicts of Interest**

- 9.1 We have procedures in place to identify and respond to conflicts of interest. Before undertaking your work, we take steps to ascertain if there is any conflict of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the Law Society Rules. If you believe that a conflict of interest has arisen or may arise, you must inform us immediately.

## **10. Trust Account**

- 10.1 We maintain a trust account for all funds that we receive from clients (except monies received for payment of our invoices). If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with a bank. In that case we will charge an administration fee of 7% of the interest derived. You acknowledge that we cannot place your funds in an interest-bearing deposit if you have not provided us with any information we request relating to your FATCA and CRS status. We are not responsible for obtaining the best interest rate available or for any loss of interest you suffer as a result of delay in placing your funds on interest bearing deposit.
- 10.2 Where you transfer funds into our trust account in a foreign currency, we will convert those funds into New Zealand dollars at the prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate.

## **11. Emails**

- 11.1 We may communicate with you and others by electronic means and we do not accept responsibility for, and will not be liable for any damages or loss caused in connection with, the unauthorised interception or corruption of electronic communications.

## **12. Use of Essential Records**

- 12.1 In providing our services to you, we may rely on information provided to us by third parties, such as government agencies, public registries, witnesses or experts. It is possible that some information provided by such sources may be inaccurate or incomplete. We are not responsible for any such errors or omissions.

## **13. General**

- 13.1 We retain all ownership rights in all intellectual property of any kind created by us for you. You may not reproduce our intellectual property or provide it to a third party without our written consent.
- 13.2 We may from time to time send you material that we believe is relevant to you or your relationship with us.
- 13.3 A failure, delay or indulgence by us in exercising any power or right will not operate as a waiver of that power or right.
- 13.4 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- 13.5 We are entitled to change these Terms from time to time. The change will bind you in respect of any matters on which we accept instructions after sending you a copy of the change.
- 13.6 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.