

LEGAL PRACTITIONERS—

LEGAL PRACTITIONERS (TRUST ACCOUNTS)
REGULATIONS. ⁽¹⁾

Short title.

1. These Regulations may be cited as the *Legal Practitioners (Trust Accounts) Regulations*.⁽¹⁾

Definitions.

2. In these Regulations, unless the contrary intention appears—

“auditor” means a person authorized under these Regulations to audit trust accounts;

“the Ordinance” means the *Legal Practitioners Ordinance 1928-1933*⁽²⁾;

“Registrar” means Registrar of the Central Court⁽³⁾;

“solicitor” means a person who has been admitted under the Ordinance as a barrister and solicitor of the Central Court⁽³⁾;

“trust accounts” means accounts relating to moneys received or held by a solicitor for or on behalf of any other person;

“year” means the twelve months ending on the thirty-first day of July.

Duty of solicitor to have trust accounts audited.

3.—(1.) Within four months after the end of each year, commencing with the year ending on the thirty-first day of July, One thousand nine hundred and thirty-four, every solicitor who was in practice in the Territory during the whole or any part of the year shall cause his trust accounts for the year to be audited by an auditor.

(2.) The auditor shall forthwith after the completion of the audit send to the Registrar a report of the result of the audit, verified by the statutory declaration of the auditor in the form set out in the Schedule to these Regulations, and to the solicitor a signed copy of the report.

(1) Particulars of these Regulations are as follows:—

Ordinance under which made.	Date on which made by Administrator.	Date on which published in <i>N.G. Gaz.</i>	Date on which took effect.
<i>Legal Practitioners Ordinance 1928-1933</i>	26.6.1933	30.6.1933	“Forthwith” ^(a) (<i>N.G. Gaz.</i> of 30.6.1933)

(a) The *Legal Practitioners (Trust Accounts) Regulations* stated in their introductory part that they were “to come into operation forthwith”. At the relevant date in 1933, Section 33 of the *Legal Practitioners Ordinance 1928-1933* (under which these Regulations were made) provided that “Regulations made under this section shall—(a) be published in the *New Guinea Gazette*; (b) take effect from the date of publication, or from a later date specified therein”. At the relevant date in 1933 there was no other Ordinance or regulation of general application providing for the publication of regulations, the date on which they were to take effect, or the meaning of “forthwith”.

(2) Now the *Legal Practitioners Ordinance 1928-1938*.

(3) See Section 7A of the *Judiciary Ordinance 1921-1938*.

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4.—(1) In the event of a solicitor carrying on business at more than one place, the Registrar may from time to time give such directions in writing as he thinks fit for separate audits of the trust accounts of the business carried on at each place or for the acceptance by the auditor of the report of some person approved by the Registrar with respect to the examination of the trust accounts kept at any branch of the business.

Power to give directions for audit of business carried on at more than one place.

(2) The Registrar may at any time review or revoke any direction, approval, or authority given under this regulation.

5.—(1) If it appears to a Judge of the Central Court⁽³⁾ that there is any reason to suspect that any solicitor has been guilty of any unprofessional conduct with respect to moneys received or held by him for or on behalf of any person, or with respect to any failure to account for the same, or that any solicitor has committed any breach of the Ordinance or these Regulations, the Judge may direct an auditor to forthwith audit the trust accounts of the solicitor and to report to him within such time as he directs.

Power to direct immediate audit in certain cases.

(2) The Council or the person for whom or on whose behalf moneys were received or are held by the solicitor may apply to a Judge of the Central Court⁽³⁾ to direct an audit under this regulation..

(3) When an application is made to a Judge of the Central Court⁽³⁾ to direct an audit under this regulation, the direction may be issued subject to such terms or conditions as the Judge thinks fit.

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

(5) The Judge, on receipt of the report, may direct that the expenses of the audit under this regulation shall be paid by the solicitor whose trust accounts have been directed to be audited.

(6) If it appears to the Judge that the report discloses any irregularity he shall direct that a copy shall be forthwith forwarded to the Council.

6. The Administrator may, by notice in the *New Guinea Gazette*, authorize any persons holding the qualification of membership of one or more of the following societies or bodies to audit trust accounts:—

Qualification of auditors.

- (a) The Australasian Corporation of Public Accountants.
- (b) The Institute of Chartered Accountants in Australia.
- (c) Commonwealth Institute of Accountants.
- (d) Federal Institute of Accountants.
- (e) Institute of Incorporated Accountants of New South Wales.

(3) See Section 7A of the *Judiciary Ordinance* 1921-1938.

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(f) Institute of Accountants of South Australia (Incorporated).

(g) Association of Accountants of Australia (Incorporated).

Duties of solicitor with respect to audit.

7.—(1.) For the purpose of any audit under these Regulations, every solicitor shall as and when the auditor requires produce to the auditor all books, papers, accounts, documents, and securities in any way relating to any moneys received by the solicitor for or on behalf of any person, and shall furnish the auditor with all the information he reasonably requires.

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

Duty of banker with respect to audit.

8. Every banker of a solicitor shall, on the request of any auditor engaged in the audit of that solicitor's trust accounts under these Regulations, supply that auditor with all such information as is reasonably necessary for the purposes of the audit.

Report by auditor.

9.—(1.) If an auditor in the course of conducting the audit of a solicitor's trust accounts under these Regulations discovers that the accounts are not kept in such a manner as to enable them to be properly audited, or discovers any matter which appears to him to involve dishonesty or any breach of the law on the part of the solicitor, or discovers any loss or deficiency of trust moneys, he shall fully set out the facts as discovered by him in his report to the Registrar, and shall also forthwith forward a copy of his report to the Council.

(2.) Except as provided in the last preceding sub-regulation, the auditor's report shall consist of a certificate stating that the trust accounts of the solicitor have been duly kept and are in order.

Statement of moneys held by solicitor for or on behalf of other persons.

10.—(1.) In addition to making the report, every auditor conducting the audit of a solicitor's trust accounts under these Regulations shall, at the time of the making of the audit, certify under his hand a statement disclosing in detail (either in the statement itself or by reference to the books of account) particulars of all moneys held by the solicitor for or on behalf of any other person on the last day of the year to which the audit relates, together with particulars of the investments thereof at that date, and shall deliver the statement to the solicitor.

(2.) The solicitor shall retain the statement and, on demand by the auditor making the next succeeding audit of the solicitor's trust accounts under these Regulations, shall produce the statement together with a signed copy of the auditor's report on the preceding audit.

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11. An auditor may disclose information obtained in the course of conducting any audit under these Regulations—

Disclosure by auditor.

- (a) in any report made pursuant to these Regulations; and
- (b) in or for the purpose of any inquiry under section 10 of the Ordinance or of any legal proceedings arising out of any such report or instituted in connexion with the trust accounts of a solicitor whose trust accounts he has audited.

12.—(1.) Any portion of a report of an auditor under these Regulations relating to the moneys or securities of any person whom the Registrar decides has a beneficial interest in the moneys or securities shall be available in the hands of the Registrar for inspection by that person or by any solicitor authorized by that person to inspect the report.

Power to inspect auditor's report.

(2.) Any report of an auditor relating to the trust accounts of a solicitor under these Regulations shall be available in the hands of the Registrar for inspection by the auditor appointed to audit the accounts of the same solicitor for the succeeding year.

13.—(1.) Any person guilty of any breach of these Regulations shall be guilty of an offence.

Penalty for breach of Regulations.

Penalty: One hundred pounds.

(2.) If two or more solicitors or other persons in partnership commit any breach of these Regulations each of those persons shall be severally liable to a penalty not exceeding One hundred pounds.

14.—(1.) The auditor by whom the annual audit is to be made under these Regulations shall be selected from the list of auditors authorized under regulation 6 of these Regulations by the solicitor whose accounts are to be audited.

Selection and remuneration of auditor.

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

15. A solicitor who neither receives nor holds, in the course of his practice, any moneys for or on behalf of any other person shall be deemed to have complied with these Regulations if within the period of four months referred to in regulation 3 of these Regulations he makes a statutory declaration to that effect and delivers it to the Registrar.

Solicitor having no accounts to audit.

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THE SCHEDULE.

Reg. 3.

TERRITORY OF NEW GUINEA.

Legal Practitioners Ordinance 1928-1933.

STATUTORY DECLARATION.

- I, _____ of _____, do solemnly and sincerely declare:—
1. That I am a person authorized to audit the trust accounts of solicitors.
 2. That in accordance with the *Legal Practitioners (Trust Accounts) Regulations* I have personally audited the trust accounts of _____, a solicitor practising at _____, for the year ending the thirty-first day of July, 19 _____.
 3. That the paper writing hereto annexed marked "A" which is dated the _____ day of _____, 19 _____ and signed by me is a true and correct report of the result of the audit.

And I make this solemn declaration by virtue of the *Statutory Declarations Act 1911* of the Commonwealth in its application to the Territory conscientiously believing the statements contained therein to be true in every particular.

Declared at _____ the _____ day of _____, 19 _____
Before me,

NOTE.—Any person who wilfully makes a false statement in a statutory declaration is guilty of an indictable offence, and is liable to imprisonment, with or without hard labour, for four years.