

INCORPORATION AND THE SOLICITORS' ACCOUNTS RULES AND REMINDER RE COMPENSATION ACT 2006

The incorporation of a legal firm as a limited company or a LLP has an impact on certain areas of the Solicitors' Accounts Rules 1998. (The Rules)

Controlled trusts

The definition of a controlled trust as set out in Rule 2 includes the following:

- "A recognised body which is a company is the sole trustee of a trust, or co-trustee only with one or more recognised body's officers or employees"
- "A recognised body which is a limited liability partnership is the sole trustee of a trust, or co-trustee only with one or more of the recognised body's members or employees."

Note (iv) to Rule 2 explains that where two or more directors of a limited company, or two or more members of an LLP, act as trustees only, this does not constitute a controlled trust. However, in an unincorporated partnership, two or more partners acting as trustees will constitute a controlled trust. Consequently, firms that have incorporated should review their register of controlled trusts to ascertain whether they are all still controlled trusts.

Client accounts

Rule 14 states that a client account must be in the name of the company or the LLP. When a firm incorporates it will need to transfer all client money

from the partnership client accounts into accounts in the name of the LLP or company. Alternatively, it may be possible to arrange with the bank for all accounts to be re-named. As for a partnership, the title of the new account must include the word 'client' in full. It must also include the name of the firm, e.g. Turner Marriott LLP Client Account.

Guidance notes produced by the Law Society explain that where there is a limit to the number of digits that can be included on statements and other electronically produced documents, it is acceptable for the name of the firm to be abbreviated, provided the firm is still identifiable.

Dividend cheques received

Rule 31 (2) states that if a company or LLP receives a dividend cheque payable to that body, and forwards the endorsed cheque to a share-owner's bank or building society, the body will have received and paid controlled trust money. The rule states further that in order to comply with the record keeping requirements of Rule 32, it is recommended that a copy of the letter to the share-owners bank or building society is kept on file and a separate copy kept in a central book of such letters.

Duty to remedy breaches

In a partnership, the duty to remedy breaches is incumbent on all the principals in the firm. This duty extends to making good any shortfall in clients' funds or controlled trust

funds. In the case of an LLP or limited company, this duty falls on the firm itself as a separate legal entity rather than on the members or directors personally.

Acting for partners, shareholders or members of the firm

Note (xii) to Rule 13 states a solicitor cannot be his or her own client for the purposes of the Rules. This means that if a practice conducts a personal or office transaction for a principal, money held or received on behalf of the principal is office money and should not be held in client account. However, an LLP or a limited company is a separate legal entity to the members or shareholders of that body. This means that where the body advises a shareholder or a director of a limited company or a member of an LLP, any money received by the body in relation to that transaction is client money, even if the member or shareholder conducts the matter personally.

Delivery of Accountants' Reports

The liability to deliver an Accountant's report to the Law Society within six months of the end of the accounting period extends to the directors of a company and members of an LLP and not just to the recognised body itself. Although it is the company or LLP that has held or received client money, the directors or members have effectively been held out as principals and will therefore need to continue to be included in the Accountant's Report. Only one Accountant's Report will be required for the company/LLP and its directors/ members for each twelve-month period.

COMPENSATION ACT 2006

Solicitors who provide claims management services through their law firms are exempt from the obligation to be authorised under the Compensation Act 2006. However, the new claims regulator is identifying a significant number of websites which link back to firms of solicitors, but do not make it clear on the face of the website that they belong to a solicitors' firm that is regulated by the Solicitors' Regulation Authority.

Contact Details

**Brian Carruthers or Sharon Scott
Thomas May & Co
Allen House
Newarke Street
Leicester
LE1 5SG**

Tel: 0116 233 5959

Email: briancarruthers@thomasmay.co.uk

This newsletter has been produced in association with DG Legal who provide specialist advice, assistance and support to legal practices.

Contact Details

**David Gilmore
DG Legal
Debdale Hill House
Debdale Hill
Old Dalby
Leicestershire
LE14 3LF**

Tel: 01664 822492

Email: david@dglegal.co.uk

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