

STATUTORY INSTRUMENT

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SOLICITORS (INTEREST ON CLIENTS' MONEYS) REGULATIONS, 2004

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**SOLICITORS (INTEREST ON CLIENTS' MONEYS)
REGULATIONS, 2004**

The Law Society of Ireland, in exercise of the powers conferred on them by section 73 of the Solicitors (Amendment) Act, 1994 hereby make the following Regulations -

Citations,
construction and
commencement

1. (1) These Regulations may be cited as the Solicitors (Interest on Clients' Moneys) Regulations, 2004 and shall be construed together with and in accordance with the provisions of section 73 of the Solicitors (Amendment) Act, 1994, the text of which section is, for ease of reference, set forth in the First Schedule to these Regulations.
- (2) These Regulations shall come into operation on the 1st day of July 2004 and thenceforth, subject to clause (3) of this Regulation, the Solicitors (Interest on Clients' Moneys) Regulations, 1995 (S.I. No 108 of 1995), as amended by The Solicitors Acts, 1954 to 1994 (Euro Changeover) Regulations, 2001 (S.I. No 504 of 2001), shall stand revoked.
- (3) The Solicitors (Interest on Clients' Moneys) Regulations, 1995 (S.I. No 108 of 1995) shall remain in full force and effect in relation to a solicitor and his or her liability to account to clients for interest on moneys received by him or her or his or her firm for or on account of such clients prior to the 1st day of July 2004.

Definitions

2. (a) In these Regulations -

“bank” means -

- (i) a bank which is the holder of a licence under section 9(1) of the Central Bank Act, 1971,
- (ii) any financial institution referred to in subsection (4)(a)(ii) and (iii) of section 7 (as inserted by the Central Bank Act, 1989) of the Central Bank Act, 1971, and
- (iii) a bank or financial institution standing designated by order of the Minister for Justice, Equality and Law Reform under section 75(2) of the Solicitors (Amendment) Act 1994;

“client” includes the personal representative of a client and any person on whose behalf the person who gave or is giving instructions was or is acting in relation to any matter in which a solicitor or his or her firm had been or is instructed; and includes a beneficiary to an estate under a will, intestacy or trust; and also includes any person on whose account a solicitor receives, holds, controls or pays clients’ moneys in the course of and arising from his or her practice as a solicitor;

“client account” means an account (whether a current account or a deposit account) opened and kept by a solicitor at a bank in his or her name designated for clients’ moneys, and in the title of which account the word “client” appears;

“clients’ moneys” means moneys received, held or controlled by a solicitor arising from his or her practice as a solicitor for or on account of a client or clients, whether the moneys are received, held or controlled by him or her as agent, bailee, stakeholder, trustee or in any other capacity, including moneys received by the solicitor on account of outlays not yet discharged; provided that

“clients’ moneys” shall not include –

- (i) moneys received, held or controlled by a solicitor in respect of which he or she is a controlling trustee or a non-controlling trustee, or
- (ii) moneys to which the only person entitled is the solicitor himself or, in the case of a firm of solicitors, one or more of the partners in the firm, or
- (iii) moneys placed on joint deposit account or joint deposit receipt other than where the payees are all solicitors practising in the same solicitors’ practice, or
- (iv) [save as provided in clause (4)(b) and (c)(ii) of Regulation 7 of the Solicitors Accounts Regulations, 2001 (S.I. No 421 of 2001) and without prejudice to the generality of the liability of a solicitor pursuant to the provisions of section 73 of the Solicitors (Amendment) Act, 1994 and regulations made thereunder] interest received by a solicitor on clients’ moneys held by the solicitor on account of his or her clients generally on an interest-bearing client account;

“Council” means the Council of the Society;

“deposit account” means a deposit account or a savings account or a deposit receipt account maintained in the name of a solicitor or his or her firm at a bank and designated as a client account of that solicitor or his or her firm;

“interest” means, in relation to clients’ moneys received by a

solicitor or his or her firm for or on account of a client, the amount of interest that would be earned if such clients' moneys had been held as an individual amount in a deposit account of the solicitor's choosing at the bank (or, if more than one bank, the principal bank) to the practice of the solicitor for a period commencing seven days after the receipt by the solicitor or his or her firm of such clients' moneys and ending when the solicitor or his or her firm actually pays out such clients' moneys to, or on behalf of, such client;

"moneys" includes moneys in a currency other than that of the State, cheques, bank notes, postal orders, money orders or any form of negotiable or non-negotiable instrument, moneys deposited or otherwise credited to a bank account or moneys deposited or otherwise credited to a bank or other financial institution outside the State;

"Society" means the Law Society of Ireland and, as appropriate, includes the Council or a committee appointed by the Council or a member of the Council or an employee or agent of the Society.

- (b) Other words and phrases in these Regulations shall have the meaning assigned to them by the Solicitors Acts, 1954 to 2002 or, subject thereto, by the Solicitors Accounts Regulations, 2001 (S.I. No 421 of 2001).
- (c) The Interpretation Acts, 1937 to 1997 (or any statutory replacement, amendment or extension thereof) shall apply for the purpose of the interpretation of these Regulations as they apply for the purposes of the interpretation of an Act of the Oireachtas, except insofar as they may be inconsistent with the Solicitors Acts, 1954 to 2002 (or any other Act that amends or extends those Acts)

or with these Regulations.

Liability of solicitor
to account for interest
on clients' moneys

3. From the date of the coming into operation of these Regulations, a solicitor to whom the Solicitors Accounts Regulations, 2001 (S.I. No 421 of 2001) applies, shall, in respect of clients' moneys received by him or her or his or her firm for or on account of a client –

(a) hold such clients' moneys in a client account which is a deposit account and shall account to the client for interest thereon while so held; or

(b) shall account to the client for interest thereon.

Determination by
Society of question
relating to interest on
clients' moneys

4. Where clients' moneys are received by a solicitor for or on account of a client, the client (without prejudice to any other legal remedy) may refer, or may require the solicitor to refer, any question relating to interest on such clients' moneys to the Society, and the Society (after providing reasonable opportunity to the client and to the solicitor to make submissions to the Society on such question) shall determine such question and shall duly notify the client and the solicitor in writing of such determination.

Solicitor not liable to
account for interest
amounting to less
than €100

5. A solicitor to whom Regulation 3 of these Regulations applies shall not be required to account to a client for interest on clients' moneys received by the solicitor or his or her firm for or on account of the client, where the amount of interest would be less than €100 (one hundred euro).

Compliance with
Solicitors Accounts
Regulations, 2001 in
relation to these
Regulations

6. (1) A solicitor shall in pursuance of his or her obligations under Regulation 3 of these Regulations to account to clients for interest on clients' moneys received by him or her or his or her firm for or on account of such clients shall, insofar as they are applicable, comply with the provisions of clause (4)(a) to (e) of Regulation 7

of the Solicitors Accounts Regulations, 2001 (S.I. No 421 of 2001), the text of which clause is, for ease of reference, set forth in the Second Schedule to these Regulations.

- (2) Nothing in these Regulations shall require a reporting accountant, within the meaning of Part V (Reporting Accountant's Report) of the Solicitors Accounts Regulations, 2001 (S.I. No 421 of 2001), to carry out an examination as to whether a solicitor has complied with these Regulations in relation to accounting to clients for interest on clients' money received by the solicitor or his or her firm for or on account of such clients.

Where Regulations do
not apply

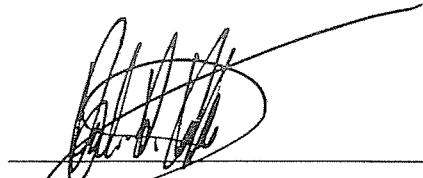
7. Nothing in these Regulations shall –

- (a) affect any arrangement in writing, whenever made, between a solicitor and a client as to the application of clients' moneys received by the solicitor on his or her firm for or on account of that client, or interest thereon; or
- (b) ~~apply to controlled trust moneys or non-controlled trust moneys~~ received by a solicitor, being controlled trust moneys or non-controlled trust moneys subject to a controlled trust or a non-controlled trust of which the solicitor is a controlling trustee or a non-controlling trustee; and “controlled trust moneys”, “non-controlled trust moneys”, “controlled trust”, “non-controlled trust”, “controlling trustee” and “non-controlling trustee” have the meanings respectively assigned to them in the Solicitors Accounts Regulations, 2001 (S.I. No 421 of 2001); or
- (c) deprive a solicitor of any legal recourse or right, whether by way of lien, charge or otherwise, that the solicitor or his or her firm may have against clients' moneys of a client standing to the credit

of a client account.

Dated this 10th day of June 2004

Signed on behalf of the Law Society of Ireland pursuant to section 79 of the Solicitors Act, 1954.



GERARD F. GRIFFIN
President of the Law Society of Ireland

I consent to the making of the within Regulations pursuant to section 73(1) of the Solicitors (Amendment) Act, 1994.

Dated this 10th day of June 2004



JOSEPH FINNEGAN
President of the High Court

FIRST SCHEDULE

within referred to

Text of section 73 of the Solicitors (Amendment) Act, 1994

“73. - (1) Without prejudice to section 66 (as substituted by this Act) of the *[Solicitors Act, 1954]* the Society shall make regulations within six months of the coming into operation of this section, with the consent of the President of the High Court, to –

- (a) require a solicitor, in prescribed cases, either –
 - (i) to open and maintain a separate deposit account at a bank for the benefit of the client for the holding of money received for or on account of the client, or
 - (ii) to pay to such client a sum equivalent to the interest which would have accrued if the money so received had been held on deposit by that solicitor,
 - (b) define the obligations of a solicitor under *paragraph (a)* of this section by reference to the amount of any sum received or to the period for which it is or is likely to be held or both, and
 - (c) enable a client (without prejudice to any other remedy) to require that any question arising under *paragraph (a) or (b)* (or both) of this subsection in relation to the client's money be referred to and determined by the Society.
- (2) Except as provided for by regulations made under *subsection (1)* of this section, a solicitor shall not be liable by virtue of the relationship between solicitor and client to account to any client for interest received by the solicitor on money deposited by a bank, being money received or held for or on account of his clients generally.
- (3) Nothing in this section or in regulations made under this section shall –
- (a) affect any arrangement in writing, whenever made, between a solicitor and his client as to the application of the client's money or interest thereon, or
 - (b) apply to money received by a solicitor, being money subject to a trust of which the solicitor is a trustee.
- (4) For the purposes of regulations made under *subsection (1)* of this section and subject to *subsection (3)* of this section, "client's money" and "money received for or on account of the client" shall mean money held or received by a solicitor on account of a person for whom he is acting in relation to the holding or receipt

of such money either as a solicitor or, arising from his practice as a solicitor, as agent, bailee, stakeholder or in any other capacity.”

SECOND SCHEDULE

within referred to

Text of clause (4)(a) to (e) of Regulation 7 of the Solicitors Accounts Regulations, 2001 (S.I. No 421 of 2001)

- “(4) (a) Without prejudice to the generality of the liability of a solicitor to a client for interest on clients’ moneys pursuant to the provisions of section 73 of the Act of 1994 and regulations made thereunder, interest received by a solicitor on clients’ moneys held by the solicitor on account of his or her clients generally on an interest-bearing client account shall, save as provided in subclause (b) and subclause (c)(ii) of this clause, not be deemed to be clients’ moneys for the purposes of these Regulations.
- (b) A solicitor who opens and maintains an interest-bearing client account for clients’ moneys held by the solicitor solely for the benefit of a specific client shall treat the amount of interest credited by the bank concerned to such interest-bearing client account as additional clients’ moneys held by the solicitor for such client and the amount of such interest so credited shall be held on client account to the credit of the specific client concerned until such time as it is paid out by the solicitor to that client or as directed by that client.
- (c) A solicitor, shall within a period of three months or by the next accounting date (whichever is the later) after the date on which an amount of interest has been credited by the bank or banks concerned to an interest-bearing client account as referred to in subclause (a) of this clause, either—
- (i) transfer from client account to office account the amount of such interest so credited to the extent that it has not already been paid out of client account by the solicitor to an individual client or clients entitled to be paid interest, and the solicitor shall designate such amount so transferred as being interest earned on client account; or
- (ii) (having calculated the amount of such interest so credited that is due to

the individual clients concerned) credit to the appropriate clients' ledger account of each individual client concerned the specific amount of such interest due to that client and, thereafter, such specific amount so credited to that client shall be treated by the solicitor as additional clients' monies held by the solicitor for that client.

- (d) A solicitor who has a liability to a client, other than a client to whom subclause (b) of this clause refers, for interest pursuant to the provisions of section 73 of the Act of 1994 and regulations made thereunder, shall pay the amount due to the client (whether by one or more separate payments) –
- (i) out of client account up to but not exceeding the amount of interest at that time standing to the credit of client account, whether or not the amount being paid to the client also includes all or part of other moneys at that time standing to the credit of the client on client account; or
 - (ii) out of office account; or
 - (iii) (immediately following a transfer of the amount due from office account to client account) out of client account, whether or not the amount being paid to the client also includes all or part of other moneys at that time standing to the credit of the client on client account.
- (e) The provision of the foregoing subclauses of this clause shall apply, *mutatis mutandis*, to the liability of a controlling trustee or a non-controlling trustee towards a controlled trust or a non-controlled trust in relation to interest credited by the bank or banks concerned to an interest-bearing controlled trust account or non-controlled trust account.”