

# WILSON | McKAY

## BARRISTERS & SOLICITORS

### Terms of Engagement and Client Care

Thank you for choosing to instruct Wilson McKay, we are pleased to be acting on your behalf. This letter sets out our terms of engagement with you.

#### Rules of Conduct and Client Care for Lawyers

The Lawyers and Conveyancers Act (Lawyers Conduct and Client Care) Rules 2008 provides that whatever legal services a lawyer provides, he or she must:

- *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:*
- *let you know how to make a complaint and deal with any complaint promptly and fairly.*

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.

Our duty is owed to you and not to any other person other than New Zealand Government agencies and Inland Revenue. This is because you are our client and we consider your particular situation and needs when we give you advice. No one else can rely on our advice unless we agree to this in writing.

#### Instructions on behalf of a Company

When you instruct us to act on behalf of a company in your capacity as a director and there are two or more directors of the company, you represent to us that you have authority to instruct us on behalf of the company. We shall not be required to verify your authority with any other director nor communicate with any other director unless you specify otherwise in writing at the commencement of our engagement.

#### Instructions on behalf of a Trust

When you instruct us to act on behalf of a Trust in your capacity as a trustee and there are two or more trustees of the Trust, you represent to us that you have authority to instruct us on behalf of all other trustees. We shall not be required to verify your authority with any other trustee nor communicate with any other trustee unless you specify otherwise in writing at the commencement of our engagement.

#### Who is Responsible for Your Work?

The person who will be primarily acting on your behalf, and the supervising partner will be confirmed prior to or at our first meeting. However, if you have any concerns or questions, you are welcome to contact any of the partners at any time.

#### Our Charges

Unless agreed otherwise our fees are based on our hourly rates adjusted in appropriate cases for the range of factors outlined by the New Zealand Law Society, including expertise, importance, urgency and results achieved.

These rates may change from time to time, and the rate of any lawyer working for you is available at any time. You will be charged GST at the rate required by law unless you are exempt.

We charge an office fee of \$50 plus GST for standard disbursements (photocopying, postage, printing, etc) and the actual costs of large one-off disbursements (Court fees, LINZ document searches and registrations, PPSR searches and registration, Companies Office searches and registration, duties/levies, Toll Calls, LIM Report fees, digital document signing, storage of files, deeds, Wills and other documentation as required (currently \$85 per file stored for files less than 500 pages and then .18c per page thereafter) etc) as well as travel expenses incurred on your behalf. These will be itemised separately, and in some cases need to be paid for in advance.

#### Wilson McKay Trustee Company

CCM-108094-30-807-1:th

WILSON McKAY HOUSE  
1A ST VINCENT AVENUE  
REMUERA 1050  
AUCKLAND  
NEW ZEALAND

PO BOX 28-347  
REMUERA 1541  
AUCKLAND  
NEW ZEALAND  
[www.wilsonmckay.co.nz](http://www.wilsonmckay.co.nz)

DX CP33019, REMUERA  
TEL (09) 520 4544  
FAX (09) 524 0397  
[lawyers@wilsonmckay.co.nz](mailto:lawyers@wilsonmckay.co.nz)

**PARTNERS**  
COLIN C. MCKAY, LL.B. (Hons)  
CHRISTINE R. WILSON, BA, LL.B.

**SENIOR ASSOCIATE**  
RENEE M JENSEN.LL.B

**ASSOCIATE**  
JAY SHEN BCOM, LLB

**CONSULTANTS**  
ROGER D. CANN, LL.B.  
MARK D. ANDREWS, BA, LL.M. (Hons)  
PHILIP M. KHOURI, BA, LL.B. (Hons)  
TARA STEWART LL.B  
THOMAS R. PIGGIN, LL.B

Where we provide a professional trustee company service there will be annual fees and Companies Office disbursements for filing the annual return at the Companies Office. Our fee and the Companies Office disbursement may change from time to time and the current charges can be obtained from the lawyer for you at any time.

### **Billing and Payment Arrangements**

Payment terms unless otherwise stated are upon settlement or within 7 days of invoice. We may deduct from funds held on your behalf any fees, disbursements or expenses for which we have provided an invoice. We may also issue interim accounts, while work is in progress, with a final bill on completion. Payment can be made by credit card, but will incur a 2% surcharge. We only accept Visa and Mastercard.

### **Lien**

Where work has been done by us, but we have not been paid by you then as a general rule we have the right to retain original documents and correspondence on your file until such time as all outstanding fees, disbursements and other expenses have been paid. This is known as a lien.

### **Estimate**

We are happy to provide an estimate of our costs and disbursements upon request. This will be provided separately.

### **Professional Indemnity Insurance and The Lawyer's Fidelity Fund**

We hold Professional Indemnity Insurance that meets or exceeds standards specified by The New Zealand Law Society. The Lawyers' Fidelity Fund also provides a limited form of cover up to specified maximums in certain circumstances, generally excluding investment monies.

### **Complaints**

If you have any concerns or complaints that you prefer not to raise with the author involved or the partner supervising your file, please contact Colin McKay who is the partner charged with investigating complaints. He may be contacted either by letter, by email [colinmckay@wilsonmckay.co.nz](mailto:colinmckay@wilsonmckay.co.nz), or by telephone directly (09) 523 0756. We are committed to resolving any issues as soon as possible. You can also contact The New Zealand Law Society's Lawyers' Complaints Service, P O Box 5041, Wellington 6145, telephone (04) 472 7837 or (0800) 261 801 or facsimile (04) 473 7909.

### **Retention of files and Documents**

You authorise us (without further reference to you) to destroy all files and documents (other than any documents that we hold in safe custody for you) 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

### **Copyright**

Unless otherwise agreed, when we prepare any document for you, you are free to use that document as you see fit, but only as our licensee. Ownership of the copyright shall at all times remain with us unless otherwise agreed.

### **Taxation and Accounting Advice**

We do not provide taxation and accounting advice and strongly recommend you consult a taxation and accounting expert. We shall not be liable in any way for any taxation and/or accounting advice which may be provided to you.

### **Conflicts of Interest**

We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set in the *Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society*. If you become aware of a conflict of interest you must tell us immediately.

Where you are borrowing moneys from a bank or lending institution we may be instructed by the lender to act on the lender's behalf in the preparation and registration of the security documents. In these circumstances we will be acting for more than one party in the transaction and will owe a duty of care to the lender. This may prevent us from disclosing information to you that we obtain from the lender and may prevent us from giving you advice that conflicts with the interest of the lender. Our costs for this work are payable by you and are included in our fees estimate (if any). Unless you advise to the contrary, your instructions will be taken as your informed consent to us also acting for the lender.

### **Trust Account**

We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices). If we are holding significant funds on your behalf we can lodge those funds on interest bearing deposit with our bank, once FATCA forms are completed by you. In that case we will charge commission of 5% of the interest derived when we receive money or property from you or from other people on your behalf, and when we distribute any of that money or property, these are the procedures that we will follow, unless you instruct us otherwise:

- Any money that you pay to us for settlement or other purposes should be in cleared funds, and paid either by bank cheque or direct credit, made payable to "Wilson McKay Trust Account". Any certificates that you provide to us should be delivered to Wilson McKay offices and we will give you a receipt.

- If we receive money or property from other people on your behalf, we will hold it in trust for you unless you instruct us otherwise, subject to any statutory obligations. Wilson McKay will follow your instructions as to how money or property that we hold on your behalf is to be applied or distributed. If money or property is being distributed to a third party bank detail verification is required together with the third party's written authority. Proof of ownership of an account and account details for receipt of funds are required by way of bank statement or deposit slip.
- If money has not been provided to us in cleared funds we may delay distributing it until we have received confirmation that the funds have been cleared.
- Wilson McKay will keep records of all money and investment property that we hold on your behalf for at least the period that is legally required. During our normal office hours we can provide you with details of any financial transactions that relate to you. We will not provide you with receipts unless you specifically ask for them.
- Money that we hold in our trust account on your behalf will not be audited and similarly, property that we hold on your behalf and distribute will not be audited – except as may be required by law.
- Wilson McKay cannot withhold from you, nor use for our own benefit, any money or property that we hold in trust on your behalf, except for money that we use to pay fees and expenses that we incur through acting as your lawyers, or for money that we deduct as our commission from the interest received on money that we hold on your behalf, or when we are legally required to withhold the money from you.
- All money or property will be reported to the relevant New Zealand and international authorities in compliance with the Foreign Account Tax Compliance Act (US Federal Law) and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

### **Our Obligations under the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA)**

CRS and FATCA require us to collect and report particular information about an Account Holder's tax residence where monies are put on interest bearing deposit in our trust account for clients. If this applies to you, then we will require you to complete certain forms that we will provide.

### **Our Obligations under the Investment Advisers (Disclosure) Act 1996**

This Act requires us to inform you that we are not investment advisers and do not have qualifications or expertise in the provision of investment advice. We shall not be liable in any way for investment advice which may be provided to you.

### **Our obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009**

We are required under this Act to obtain identification and verification documents from you and to ask about the nature and purpose of the proposed work you are asking us to do. We may retain the information and documents, provide them to a bank or other applicable entity to deal with in accordance with their terms, and we may disclose them to any law enforcement or regulatory agency or court as required by law. The attached sheet explains further our statutory obligations and what we will require from you.

### **Privacy Act 1993**

We will treat all your personal information as confidential, subject to any statutory obligations.

We may need to disclose the personal information you provide to us, to:

- our agents
- other organisations, including other parties in the matter, a court, and law enforcement and government agencies who process transactions or perform regulatory functions,
- but only to carry out your instructions, to fulfil our professional duties, to exercise our rights under these Terms, or to comply with a legal requirement.

We will comply with all applicable laws (including the Privacy Act 1993) when we collect, use, and disclose personal information about you.

We will sometimes need to collect, use, and disclose personal information about your employees, directors, or other people associated with you or with your transactions (including any principals or beneficiaries for whom or for whose benefit you are acting) to carry out your instructions. Please make sure that these people are aware that our acting for you may involve collecting, using, and disclosing personal information about them. In most cases you and they can request access to the personal information we hold about you and them.

We may also use your personal information to keep you informed about legal developments, other legal services, or seminars we offer. Please let us know if you do not want your personal information used for this purpose.

### **Taxation (Bright-Line Test for Residential Land) Act 2015**

By instructing us in the sale or purchase of residential land we are obliged to pay on your behalf any Residential Land Withholding Act tax that may be payable ("the Bright Line Test") and you authorise us to do so.

### **Is our liability capped?**

To the extent permitted by law, our aggregate liability to you (whether in contract, equity, tort, statute or otherwise) arising out of your engagement of us on a matter (or any series of related matters) is limited to the lesser of:

- the amount available to be paid out under any relevant insurance held by us, up to a maximum of NZ\$6,500,000;  
or
- five times the amount of our applicable fee (excluding our office services charge, disbursements, and GST)

**What Law Governs These Terms?**

These terms and any other agreement we have with you are governed by New Zealand Law and are subject to the exclusive jurisdiction of the New Zealand Courts. You may not assign or transfer any rights or obligations under these terms or any other agreement that we have with you.

**Acceptance of Terms of Engagement**

By instructing us to provide you with legal services you are deemed to have accepted these terms of engagement on your own behalf personally and also on behalf of every Trust in which you are a Trustee and Company in which you are a Director if work is carried out by us on behalf of any such entities. In the event you wish us to hold funds on your behalf you will be required to sign an account opening form which includes a Certification and Authorisation to comply with New Zealand and international tax and reporting standards.

**Conclusion**

We value your instructions and look forward to working with you. We also look forward to an on-going relationship with you, so please retain this letter as the core basis of our relationship and our commitment to you to attend to your affairs diligently, with an efficient, effective and professional service.

# Anti-Money Laundering and Countering Financing of Terrorism Act 2009

## Why we need to ask you for information

New Zealand passed a law called the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“the AML/CFT law” for short). The purpose of the law reflects New Zealand’s commitment to the international initiative to counter the impact that criminal activity has on people and economies within the global community.

FROM 1 July 2018 lawyers must comply with its requirements. Lawyers must do a number of things to help combat money laundering and terrorist financing, and to help Police bring the criminals who do it to justice. The AML/CFT law does this because the services law firms and other professionals offer may be attractive to those involved in criminal activity.

The law says that law firms and other professionals must assess the risk they may face from the actions of money launderers and people who finance terrorism and must identify potentially suspicious activity.

To make that assessment, lawyers must obtain and verify information from prospective and existing clients. This is part of what the AML/CFT law calls “customer due diligence”.

## Customer Due Diligence Requirements

Customer due diligence requires a law firm to undertake certain background checks before providing services to clients or customers. Lawyers must take reasonable steps to make sure the information they receive from clients is correct, and so they need to ask for documents that show this.

We will need to obtain and verify certain information from you to meet these legal requirements. This information includes:

- your full name; and
- your date of birth; and
- your address.

To confirm these details, documents such as your passport, driver’s licence or birth certificate and documents that show your address – such as a current bank statement – will be required.

If you are seeing us about company or trust business, we will need information about the company or trust including the people associate with it (such as directors and shareholders, trustees and beneficiaries).

We may also need to ask you for further information. We will need to ask you about the nature and purpose of the proposed work you are asking us to do for you. Information confirming the source of funds for a transaction may also be necessary to meet the legal requirements.

## If you cannot provide the required information

If we are not able to obtain the required information from you, it is likely we will not be able to act for you. Because the law applies to everyone, we need to ask for the information even if you have been a client of ours for a long time.

Before we start working for you, we will let you know what information we need, and what documents you need to show us and let us photocopy.

Please contact the lawyer who will be undertaking your work, if you have any queries or concerns.