

## **Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001**

Rules dated 28th September 2001, made by the Council of the Law Society of Scotland under sections 34(1), 35(1), 37(6) and 43 of, and paragraph 4(4) of Part I of Schedule 3 to, the Solicitors (Scotland) Act 1980 and approved by the Lord President of the Court of Session under section 34(3) of the said Act.

### PART I – GENERAL

#### **Citation, Commencement, Revocation and Saving Provisions**

1. (1) These Rules may be cited as the Solicitors (Scotland) Accounts etc Rules 2001.
- (2) These Rules shall come into operation on 1st February 2002.
- (3) The Scottish Solicitors' Guarantee Fund Rules 1995, the Solicitors (Scotland) Accounts Rules 1997 and the Solicitors (Scotland) Accounts Certificate Rules 1997 are hereby revoked, provided that such revocation -
  - (a) shall not affect the validity of any application made or other thing done under the Scottish Solicitors' Guarantee Fund Rules 1995, and
  - (b) shall not cause the interruption of the time periods specified in rules 13 and 14 of the Solicitors (Scotland) Accounts Rules 1997 or rule 3 of the Solicitors (Scotland) Accounts Certificate Rules 1997 nor affect any obligation to deliver a Certificate (whether (i) outstanding at the date of revocation or (ii) in respect of the accounting period (under the Solicitors (Scotland) Accounts Certificate Rules 1997) which ends after the date of revocation) in terms of the Solicitors (Scotland) Accounts Certificate Rules 1997 nor the rights of the Society against any solicitor in respect of his failure to deliver such a Certificate.

#### **Interpretation**

2. (1) In these Rules, unless the context otherwise requires  
“**accounting period**” shall mean -
    - (a) a period not exceeding six months in duration, the first period commencing on the expiry of the immediately preceding accounting period (under the Solicitors (Scotland) Accounts Certificate Rules 1997) after the commencement of these Rules and each period thereafter commencing on the expiry of the immediately preceding period; or
    - (b) where there is no such immediately preceding accounting period a period not exceeding six months in duration, the first period commencing on the date on which Part II of these Rules applies to the solicitor or, having ceased to apply, applies again to that solicitor and each period thereafter commencing on the expiry of the immediately preceding period;
- “**the Act**” means the Solicitors (Scotland) Act 1980;
- “**balance his books**” means to prepare and bring to a balance a trial balance being a schedule or list of balances both debit and credit extracted from the accounts in both firm and client ledgers and including the cash and bank balances from the cash book;

- “**bank**” means the Bank of England, the National Savings Bank, the Post Office in the exercise of its powers to provide banking services and an institution authorised under the Banking Act 1987 and which operates within the bankers’ automated clearing system provided however that an authorised bank not operating within the bankers’ automated clearing system may be approved by the Council for the purposes of this sub-paragraph;
- “**Certificate**” shall mean a certificate in the form set out in Schedule 1, 2a or 2b (as the case may be) to these Rules, or in such other form as the Council may from time to time approve;
- “**client account**” means a current, deposit, or savings account or other form of account or a deposit receipt at a branch of a bank in the United Kingdom in the name of the solicitor in the title of which the word “client”, “trustee”, “trust”, or other fiduciary term appears and includes an account or a deposit receipt with a bank, a deposit, share or other account with a building society authorised under the Building Societies Act 1986, a current or general account with a building society operating such an account within the bankers automated clearing system or an account showing sums on loan to a local authority being in such cases in name of the solicitor for a client whose name is specified in the title of the account or receipt;
- “**clients’ money**” means money (not belonging to him) received by a solicitor whether as a solicitor or as a trustee in the course of his practice;
- “**the Council**” means the Council of the Society;
- “**incorporated practice**” shall have the meaning given in section 34(1)(A) of the Act;
- “**local authority**” means a council within the meaning of the Local Government etc. (Scotland) Act 1994;
- <sup>1</sup> “**Money Laundering Regulations**” means the Money Laundering Regulations 2007 (S.I. 2007 No. 2157);
- <sup>1</sup> “**relevant person**” has the meaning given by regulation 2(1) of the Money Laundering Regulations;
- “**partner**” means a partner of a firm of solicitors or a director or member of an incorporated practice which is a company or a member of an incorporated practice which is a limited liability partnership;
- “**print-out**” means a printed or typewritten copy of any account or other information stored in a computer;
- “**the Society**” means the Law Society of Scotland;
- <sup>2</sup> “**solicitor**” means a solicitor holding a practising certificate under the Act and includes a firm of solicitors and an incorporated practice and also includes a registered foreign lawyer and a multinational practice; and
- “**practice year**” shall have the meaning given in section 65(1) of the Act.
- (2) The Interpretation Act 1978 applies to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

#### NOTES

- 1 As amended by the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund (Amendment) Rules 2004, Sch.1 (effective September 1, 2004) and by the Solicitors (Scotland) Accounts etc. (Amendment No.2) Rules 2007, r.3 (effective December 15, 2007).
- 2 As amended by the Solicitors (Scotland) (Registered Foreign Lawyers) etc. Practice Rules 2005, Sch.5 (effective May 1, 2005).

#### Rules not to apply to solicitors in certain employments

3. (1) Parts II and III of these Rules shall not apply to a solicitor who is in any of the employments mentioned in sub-sections (4)(a), (b) and (c) of section 35 of the Act so far as regards monies received, held or paid by him in the course of that employment.

- (2) Parts IV, V and VI of these Rules shall not apply to such a solicitor as is referred to in paragraph (1) of this Rule so far as regards anything done or omitted to be done by him in the course of that employment.

## PART II—ACCOUNTS RULES

### **Clients' money to be paid into client account**

4. (1) Subject to the provisions of Rule 7 every solicitor shall -
- (a) ensure that at all times the sum at the credit of the client account, or where there are more such accounts than one, the total of the sums at the credit of those accounts, shall not be less than the total of the clients' money held by the solicitor; and
  - (b) pay into a client account without delay any sum of money exceeding £50 held for or received from or on behalf of a client.
- (2) Where money is held by the solicitor in a client account in which the name of the client is specified and where no money is due to that client by the solicitor or the amount due is less than the amount in the specified client account, the sum in that account or, as the case may be, the excess, shall not be treated as clients' money for the purposes of paragraph (1)(a) of this Rule.
- (3) Nothing herein contained shall -
- (a) empower a solicitor, without the express written authority of the client, to deposit any money held by the solicitor for that client with a bank or on share, deposit or other account with a building society or on loan account with a local authority in name of the solicitor for that client, except on such terms as will enable the amount of the share or deposit or loan or any part thereof to be uplifted or withdrawn on notice not exceeding one calendar month;
  - (b) relieve a solicitor of his responsibilities to the client to ensure that all sums belonging to that client and held in a client account in terms of these Rules are available when required for that client or for that client's purpose; and
  - (c) preclude the overdrawing by a solicitor of a client account in which the name of the client for whom it is held is specified where that client has given written authority to overdraw, and an overdraft on such account shall not be taken into account to ensure compliance with paragraph (1)(a) of this Rule.

### **Other payments to client accounts**

5. There may be paid into a client account -
- (a) such money belonging to the solicitor as may be necessary for the purpose of opening the account or required to ensure compliance with Rule 4(1)(a); and
  - (b) money to replace any sum which may by mistake or accident have been withdrawn from the account.

### **Drawings from client account**

6. (1) So long as money belonging to one client is not withdrawn without his written authority for the purpose of meeting a payment to or on behalf of another client, there may be drawn from a client account -
- (a) money required for payment to or on behalf of a client;
  - (b) money required for or to account of payment of a debt due to the solicitor by a client or in or to account of repayment of money expended by the solicitor on behalf of a client;
  - (c) money drawn on a client's authority;
  - (d) money properly required for or to account of payment of the solicitor's professional account against a client which has been debited to the ledger

account of the client in the solicitor's books and where a copy of said account has been rendered;

- (e) money for transfer to a separate client account kept or to be kept for the client only;
  - (f) money which may have been paid into the account under paragraph (a) of Rule 5 and which is no longer required to ensure compliance with Rule 4(1)(a); and
  - (g) money which may by mistake or accident have been paid into the account.
- <sup>1</sup> (2) Where money drawn from a client account by cheque is payable to a person's account with any bank or building society, the cash book and ledger entries relating thereto and said cheque shall include the name of the person whose account is to be credited with the payment.

NOTE

- <sup>1</sup> As amended by the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund (Amendment) Rules 2004, Sch.1 (effective September 1, 2004).

**Exceptions from Rule 4**

7. Notwithstanding any of the provisions of this Part of these Rules, a solicitor shall not be obliged to pay into a client account, but shall be required to record in his books, clients' money held or received by him -
- (a) in the form of cash which is without delay paid in cash to the client or a third party on the client's behalf;
  - (b) in the form of a cheque or draft or other bill of exchange which is endorsed over to the client or to a third party on the client's behalf and which is not passed by the solicitor through a bank account;
  - (c) which he pays without delay into a separate bank, building society or local authority deposit account opened or to be opened in name of the client or of some person named by the client;
  - (d) which the client for his own convenience has requested the solicitor in writing to withhold from such account;
  - (e) for or to account of payment of a debt due to the solicitor from the client or in repayment in whole or in part of money expended by the solicitor on behalf of the client; or
  - (f) expressly on account of a professional account incurred to the solicitor by the client, or as an agreed fee or to account of an agreed fee for business done by the solicitor for the client where a copy of said account has been rendered.

**Accounts required to be kept in books of solicitor**

8. (1) A solicitor shall at all times keep properly written up such books and accounts as are necessary -
- (a) to show all his dealing with -
    - (i) clients' money held or received or paid or in any way intromitted with by him;
    - (ii) any other money dealt with by him through a client account;
    - (iii) any bank overdrafts or loans procured by him in his own name for behoof of a client or clients; and
    - (iv) any other money held by the solicitor in a separate account in the title of which the client's name is specified; and
  - (b) (i) to show separately in respect of each client all money of the categories specified in sub-paragraph (a) of this paragraph which is received, held or paid by him on account of that client; and
  - (ii) to distinguish all money of the said categories received, held or paid by him from any other money received, held or paid by him.

- (2) Without prejudice to paragraph (1) above, this Rule shall apply to money received or payments made by a solicitor by virtue of any power of attorney in his favour.
- (3) All dealings referred to in paragraph (1) of this Rule shall be recorded -
  - (a) in a clients' cash book, or a clients' column of a cash book, or
  - (b) in a record of sums transferred from the ledger account of one client to that of another, as may be appropriate, and in addition in a clients' ledger or a clients' column of a ledger.
- (4) Every solicitor shall -
  - (a) at all times keep properly written up such books and accounts as are necessary to show the true financial position of his practice; and
  - (b) balance his books monthly and on the last day of each accounting period.
- (5) The "books", "accounts", "ledger" and "records" referred to in these Rules shall be deemed to include loose-leaf books and such cards or other permanent records as are necessary for the operation of any system of book-keeping, mechanical or computerised.
- (6) Where a solicitor maintains the accounts required by these Rules on a computerised system which does not rely on a visible ledger card for its operation such system must be such that -
  - (a) an immediate print-out can be obtained of any account notwithstanding that immediate visual access is available; and
  - (b) all accounts which for any reason may require to be removed from the working store of the system must before removal be copied on to a storage medium which will enable a visual record of the detailed entries therein to be produced and be filed in alphabetical or other suitable order, indexed and retained for the period set out in paragraph (7) of this Rule.
- (7) A solicitor shall preserve for at least ten years from the date of the last entry therein all books and accounts kept by him under this Rule or a copy thereof in a form which will enable a visible record of the detailed entries therein to be produced from such a copy.

#### **Client bank statements to be regularly reconciled**

9. (1) Every solicitor shall within one month of the coming into force of these Rules or of his commencing practice on his own account (either alone or in partnership or as an incorporated practice), and thereafter at intervals not exceeding one month, cause the balance between the client bank lodged and drawn columns of his cash book or the balance of his client bank ledger account as the case may be to be agreed with his client bank statements and shall retain such reconciliation statements showing this agreement for a period of three years from the dates they were respectively carried out.
- (2) On the same date or dates specified in paragraph (1) of this Rule every solicitor shall extract from his clients' ledger a list of balances due by him to clients and prepare a statement comparing the total of the said balances with the reconciled balance in the client bank account and retain such lists of balances and statements for a period of three years from the dates they were respectively carried out.

#### **Client funds invested in specified accounts**

- <sup>1</sup> 10. (1) Every solicitor shall within three months of the coming into force of these Rules or of his commencing practice on his own account (either alone or in partnership or as an incorporated practice or as a member of a multi-national practice), and thereafter at intervals not exceeding three months and coinciding with the date of a reconciliation in terms of Rule 9 hereof, cause the balance between the client deposited and withdrawn columns of his cash book or the balance on his client invested funds ledger account as the case may be to be agreed with his

- client passbooks, building society printouts, special deposit accounts, local authority deposits, joint deposits or other statements or certificates and shall retain such reconciliation statements showing this agreement for a period of three years from the dates they were respectively carried out.
- (2) On the same date or dates specified in paragraph (1) of this Rule every solicitor shall extract from his client ledger a list of funds invested by him in his name for specified clients and prepare a statement comparing the total of the said balances with the reconciled investment funds and retain such lists of balances and statements for a period of three years from the dates they were respectively carried out.

NOTE

- <sup>1</sup> As amended by the Solicitors (Scotland) (Registered Foreign Lawyers) etc. Practice Rules 2005, Sch.5 (effective May 1, 2005).

**Interest to be earned for a client**

11. (1) Where a solicitor holds money for or on account of a client and, having regard to the amount of such money and the length of time for which it or any part of it is likely to be held, it is reasonable that interest should be earned for the client, the solicitor shall so soon as practicable place money or, as the case may be, such part thereof, in a separate interest bearing client account in the title of which the client's name is specified and shall account to the client for any interest earned thereon, failing which the solicitor shall pay to the client out of his own money a sum equivalent to the interest which would have accrued for the benefit of the client if the sum he ought to have placed in such an interest bearing client account under this Rule had been so placed.
- (2) Without prejudice to the generality of paragraph (1) of this Rule it shall be deemed reasonable that interest should be earned for a client from the date on which a solicitor receives for or on account of the client a sum of money not less than £500 which at the time of its receipt is unlikely within two months thereafter to be either wholly disbursed or reduced by payments to a sum less than £500.
- (3) Without prejudice to any other remedy which may be available, any client who feels aggrieved that interest has not been paid under this Rule shall be entitled to require the solicitor to obtain a certificate from the Society as to whether or not interest ought to have been earned and, if so, the amount of such interest, and upon the issue of such certificate any interest certified to be due shall be payable by the solicitor to the client.
- (4) Nothing in this Rule shall affect any arrangement in writing, whenever made, between a solicitor and his client as to the application of a client's money or interest thereon provided such arrangement was made prior to the said application.
- (5) For the purposes of this Rule only, money held by a solicitor for or on account of a client
- (a) for the purpose of paying stamp duty, recording dues or other outlays on behalf of the client; or
  - (b) for or to account of the solicitor's professional account where said account has been rendered,
- shall not be regarded as clients' money.

**Application of Rules in case of firm of solicitors or incorporated practice or multi-national practice**

- <sup>1</sup> 12. (1) Each partner of a firm of solicitors or member of an incorporated practice or a multi-national practice shall be responsible for securing compliance by the firm or incorporated practice or multi-national practice with the provisions of these Rules.

- (2) Without prejudice to paragraph (1) of this Rule within one month of the coming into force of these Rules or of its commencing practice on its own account every firm of solicitors or incorporated practice or multi-national practice shall designate one or more of the partners of the firm or the directors or members of the incorporated practice or multi-national practice as Designated Cashroom Partner or Partners who will be responsible for the supervision of the staff and systems employed by the firm or incorporated practice or multi-national practice to carry out the provisions of these Rules and for securing compliance by the firm or incorporated practice or multi-national practice with the provisions of these Rules.
- (3) Every firm of solicitors or incorporated practice or multi-national practice shall deliver to the Council a Certificate listing the name or names of the Designated Cashroom Partner or Partners and the period or periods in respect of which he was, or they were, designated during the accounting period in respect of which the Certificate is delivered.

#### NOTES

- 1 As amended by the Solicitors (Scotland) (Registered Foreign Lawyers) etc. Practice Rules 2005, Sch.5 (effective May 1, 2005).

#### **Savings of right of solicitor against client**

13. Nothing in these Rules shall deprive a solicitor of or prejudice him with reference to any recourse or right in law, whether by way of lien, set-off, counter-claim, charge or otherwise, against monies standing to the credit of a client account or against monies due to a client by a third party.

### PART III—ACCOUNTS CERTIFICATE

#### **Obligation to deliver a Certificate**

14. (1) A solicitor shall deliver to the Council within one calendar month of the completion of each accounting period a Certificate in respect of that period. In respect of an accounting period for which no client monies have been held the Certificate shall be in the form set out in Schedule 2a or 2b to these Rules and in all other cases shall be in the form set out in Schedule 1 to these Rules.
- (2) The Council may, in any case on cause satisfactory to it being shown, extend the period of one calendar month within which a Certificate is required following a balancing of books, but such extension shall in no case exceed three months from the date on which the Certificate should have been delivered.

#### **Who may sign a Certificate**

15. The Certificate under these Rules must be signed by two partners, one of whom must be the current Designated Cashroom Partner, unless the solicitor is a sole practitioner.

#### **Where solicitor practises in two or more places**

16. In the case of a solicitor who has two or more places of business and where separate books and accounts are maintained for each office a separate Certificate shall be submitted in respect of each such place of business. In any such case the client account balance shall be struck on the same date in respect of each place of business.

### **Notice to a solicitor under this Part and Part II of these Rules**

- <sup>2,1</sup>17. Every notice to be given by the Council under this Part or Part II of these Rules to a solicitor shall be in writing and signed by the Secretary of the Society or a Director of the Society and shall be sent by recorded delivery post to the solicitor at his place of business as defined in the Constitution of the Society or in the case of a solicitor who has ceased to hold a practising certificate at his last known address, and shall be deemed to have been received by the solicitor within forty-eight hours of the time of posting. In the case of a firm or incorporated practice or multi-national practice the written notice shall be given to each person who is known to the Council to be a partner of the firm, or a director of the incorporated practice (where that incorporated practice is a company), or a member of the incorporated practice (where that incorporated practice is a limited liability partnership) or a member of the multi-national practice and it shall not be necessary to give notice to the firm or incorporated practice or multi-national practice also.

#### **NOTE**

- 1 As amended by the Solicitors (Scotland) (Registered Foreign Lawyers) etc. Practice Rules 2005, Sch.5 (effective May 1, 2005).
- 2 As amended by the Solicitors (Scotland) Accounts, etc (Amendment) Rules 2006, s.3(1), (effective December 1, 2006).

### **Reservation of power of Council to require an inspection or authorise an investigation**

18. The delivery of a Certificate to the Council in terms of these Rules shall not prejudice the power of the Council to require an inspection or to authorise an investigation as provided for in Rule 19 of these Rules.

## **PART IV—INSPECTIONS AND INVESTIGATIONS**

### **Inspections and investigations on behalf of Council**

19. (1) To enable the Council to ascertain -
- (a) whether or not these Rules are being complied with, and
  - (b) whether or not the practice of the solicitor is being conducted in such a manner as may put at risk the interests of the public or the interests of the profession,
- the Council may, by written notice, require any solicitor to produce at a time to be fixed by the Council and at a place to be fixed by the Council, or in the option of the solicitor at his place of business, documents, records and other information concerning the conduct of his practice (in this Rule referred to as "documents, records and other information") including, without prejudice to the foregoing generality, his books of account, bank passbooks, loose leaf bank statements, deposit receipts, documents of joint deposit, building society pass books, local authority deposits, separate statements of bank overdrafts or loans procured by him in his own name or for a client or clients, statements of account, vouchers, magnetic storage disks, print-outs, microfilm records, relative correspondence and any powers of attorney in his favour for the inspection of a person or persons authorised by the Council.
- (2) If at any time there is a reasonable apprehension on the part of the Council -
- (a) that a solicitor has not complied with, is not complying with or may not comply with these Rules, or
  - (b) that the practice of the solicitor has been, is being or may be being conducted in such a manner as may put at risk the interests of the public or the interests of the profession,
- the Council may authorise a person or persons to conduct such investigation into the conduct of the solicitor and his practice as the Council may consider appropriate. The Council shall, subject to paragraph (5) of this Rule, give written

- notice of its authorisation of such a person or persons to conduct such investigation to the solicitor concerned.
- (3) It shall be the duty of a solicitor to provide a person or persons authorised by the Council under paragraph (1) or (2) of this Rule reasonable co-operation in the conduct of that person's or persons' inspection or investigation (as the case may be) including, without prejudice to the foregoing generality, the production of documents, records and other information as such person or persons may reasonably require.
  - (4) Any person or persons authorised by the Council under paragraph (1) or (2) of this Rule shall report to the Council upon the result of his inspection or investigation (as the case may be).
  - <sup>2, 1</sup> (5) A written notice given by the Council to a solicitor under paragraph (1) or (2) and, where appropriate, paragraph (6) of this Rule shall be signed by the Secretary of the Society or a Director of the Society and shall be sent by recorded delivery post to the solicitor at his place of business as defined in the Constitution of the Society or in the case of a solicitor who has ceased to hold a practicing certificate at his last known address, and shall be deemed to have been received by the solicitor within forty-eight hours of the time of posting. In the case of a firm or incorporated practice or multi-national practice the written notice shall be given to each person who is known to the Council to be a partner of the firm, or a director of the incorporated practice (where that incorporated practice is a company), or a member of the incorporated practice (where that incorporated practice is a limited liability partnership) or a member of the multi-national practice and it shall not be necessary to give notice to the firm or incorporated practice or multi-national practice also. Notwithstanding the provisions of this paragraph, if, in a case falling within paragraph (2) of this Rule, the Council shall reasonably consider that urgent action is required to protect the interests of the public or the interests of the profession, the Council may dispense with the notice required in terms of this paragraph and make such other order as to notification as it considers appropriate.
  - <sup>4</sup> (6) Where, following an inspection of the documents, records and other information of a solicitor in terms of paragraph (1) of this Rule or an investigation in terms of paragraph (2) of this Rule, or following any further inspection or investigation in terms of this paragraph, it appears to the Council that the solicitor has not complied with these Rules or that the practice of the solicitor has been or is being conducted in such a manner as may put at risk the interests of the public or the interests of the profession, the Council may instruct a further inspection of the documents, records and other information of the solicitor or a further investigation. If it so instructs, the Council may by written notice require the solicitor to pay, or agree with the solicitor that he will pay, to the Council the reasonable costs of any such further inspection or investigation, provided always that such written notice is given to the solicitor, or such agreement is reached with the solicitor, not more than twelve months after the date of the immediately preceding inspection or investigation.
  - <sup>3</sup> (7) The costs referred to in paragraph (6) of this Rule shall be determined by reference to a daily rate which shall be fixed by the Council from time to time. The amount of any such costs shall be intimated by a Director of the Society to the solicitor following such further inspection or investigation.
  - <sup>5</sup> (8) It shall be the duty of a solicitor upon whom a notice in terms of paragraph (6) of this Rule has been served or with whom an agreement in terms of paragraph (6) of this Rule has been reached to make payment forthwith of the amount of costs intimated in terms of paragraph (7) of this Rule.
  - (9) Any sum paid to the Council in terms of paragraph (8) of this Rule shall accrue to the Guarantee Fund.

#### NOTES

- <sup>1</sup> As amended by the Solicitors (Scotland) (Registered Foreign Lawyers) etc. Practice Rules 2005, Sch.5 (effective May 1, 2005).

- 2 As amended by the Solicitors (Scotland) Accounts, etc (Amendment) Rules 2006, s.3(2), (effective December 1, 2006).
- 3 As amended by the Solicitors (Scotland) Accounts, etc (Amendment) Rules 2006, s.3(3), (effective December 1, 2006).
- 4 As amended by the Solicitors (Scotland) Accounts, etc (Amendment) Rules 2007, s.3(1), (effective May 1, 2007).
- 5 As amended by the Solicitors (Scotland) Accounts, etc (Amendment) Rules 2007, s.3(2), (effective May 1, 2007).

## PART V—PROFESSIONAL PRACTICE

### **Bridging loans**

20. A solicitor shall not enter into or maintain any contract or arrangement with a bank or other lender in terms of which the solicitor may draw down loan or overdraft facilities in his name on behalf of clients unless -
- (1) the solicitor shall, in every case before drawing down any sums in terms of such contract or arrangement, have intimated in writing to the bank or other lender -
    - (a) the name and present address of the client for whom the loan or overdraft facilities are required; and
    - (b) the arrangements for repayment of the loan or overdraft facilities; and
  - (2) the contract or arrangement does not impose personal liability for repayment of any such loan or overdraft facilities on the solicitor.

### **Borrowing from clients**

21. A solicitor shall not borrow money from his client unless his client is in the business of lending money or his client has been independently advised in regard to the making of the loan.

### **Prohibition on solicitor acting for lender to the solicitor or connected persons**

- 22.<sup>1,2,3</sup> (1) No solicitor shall, and nor shall that solicitor's firm or incorporated practice or multi-national practice, act for or pursuant to the written requirements of a lender in the constitution, variation, assignation or discharge of a standard security securing a loan which has been advanced or is to be advanced to or has been guaranteed or is to be guaranteed by -
- (a) the solicitor, where he is a sole practitioner or a partner of a firm or a member of an incorporated practice or multi-national practice,
  - (b) the solicitor's spouse or civil partner, where the solicitor is a sole practitioner or a partner of a firm or a member of an incorporated practice or multi-national practice,
  - (c) any partner of the solicitor,
  - (d) the spouse or civil partner of any such partner,
  - (e) any sole practitioner who, or partner of a firm or member of an incorporated practice or multi-national practice which, employs the solicitor, or the spouse or civil partner of any such sole practitioner, partner or member,
  - (f) any firm or incorporated practice or multi-national practice which employs the solicitor,
  - (g) any incorporated practice or multi-national practice of which the solicitor or his spouse or civil partner is a member,
  - (h) any partnership or limited partnership of which any of the persons specified in sub-paragraphs (a) to (g) inclusive of this paragraph is a partner or member, or
  - (i) any company in which any person specified in sub-paragraphs (a) to (h) inclusive of this paragraph holds shares, whether directly or indirectly, other than a holding amounting to not more than 5% of the issued shares in a public company quoted on a recognised stock exchange.

- (2) For the avoidance of doubt, rule 5(1)(f) of the Solicitors (Scotland) Practice Rules 1986 shall not apply to any such loan as is referred to in paragraph (1).
- (3) For the purposes of this Rule “loan” shall include an obligation ad factum praestandum or any obligation to pay money and “lender” shall include any person to whom said obligation is owed.
- (4) This Rule shall not apply if -
  - (a) the lender to any of the persons specified in paragraph (1) is the solicitor, or
  - <sup>1</sup>(b) the borrower’s obligations under the standard security have been fully implemented before the solicitor accepts instructions or in any way begins to act in relation to the discharge of such standard security.
- (5) The Council shall have power to waive any of the provisions of this Rule in any particular circumstances or case. Any waiver may be granted subject to such conditions as the Council shall think fit.

NOTES

- 1 As amended by Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund (Amendment) Rules 2004, Sch.1 (effective September 1, 2004).
- 2 As amended by the Solicitors (Scotland) (Registered Foreign Lawyers) etc. Practice Rules 2005, Sch.5 (effective May 1, 2005).
- 3 As amended by the Solicitors (Scotland) (Miscellaneous Amendments) Rules 2006, Rule 3 Sch.1(4).

**Powers of Attorney**

23. (1) This Rule shall, subject to paragraph (2) below, apply to monies received or payments made by a solicitor by virtue of any power of attorney in his favour.
- (2) In the event of any power of attorney granted in favour of a solicitor continuing to have effect by virtue of sections 15 or 88 of the Adults with Incapacity (Scotland) Act 2000 any money of the granter held or received by the solicitor shall be clients’ money.
- (3) Every solicitor shall deliver to the Council a list of any powers of attorney in the solicitor’s favour held or granted during an accounting period, the list to be as set out in the Certificate.

**Money laundering**

- <sup>1</sup> 24. <sup>2</sup>(1) Every solicitor shall, in respect of all business carried on by the solicitor in relation to which the solicitor is not a relevant person, comply with the provisions of the Money Laundering Regulations as if the solicitor were a relevant person.
- <sup>2</sup>(2) For the avoidance of doubt, paragraph (1) is without prejudice to the application of the Money Laundering Regulations to all business carried on by a solicitor in respect of which the solicitor is a relevant person.
- (3) Every solicitor shall comply with the provisions of Part 7 of the Proceeds of Crime Act 2002.

NOTES

- 1 As amended by Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund (Amendment Rules 2004), Sch.1 (effective September 1, 2004).
- 2 As amended by the Solicitors (Scotland) Accounts etc. (Amendment No.2) Rules 2007, r.4 (effective December 15, 2007).

PART VI—GUARANTEE FUND

**Interpretation for Part VI**

25. In this Part of these Rules, unless the context otherwise requires -
  - (a) “the Fund” means the Scottish Solicitors Guarantee Fund;
  - <sup>2</sup>(b) “the Secretary” means the Secretary of the Society;
  - (c) “loss” means pecuniary loss by reason of dishonesty on the part of -
    - (i) any solicitor in practice in the United Kingdom, or any employee of such solicitor in connection with the practice of the solicitor, and whether or not he

had a practising certificate in force when the act of dishonesty was committed, and notwithstanding that subsequent to the commission of that act he may have died or had his name removed from or struck off the Roll of Solicitors or may have ceased to practise or been suspended from practice; or

- <sup>1</sup> (ii) any incorporated practice or multi-national practice or any director, manager, secretary or other employee of an incorporated practice or member of other employee of a multi-national practice, notwithstanding that subsequent to the commission of that act it may have ceased to be recognised under section 34(1)(A) of the Act or to be a multi-national practice or have been wound up.

#### NOTES

- 1 As amended by the Solicitors (Scotland) (Registered Foreign Lawyers) etc. Practice Rules 2005, Sch.5 (effective May 1, 2005).
- 2 As amended by the Solicitors (Scotland) Accounts, etc (Amendment) Rules 2006, s.3(4), (effective December 1, 2006).

#### **Payments into and out of the Fund**

26. (1) There shall be carried to the credit of the Fund -
  - (a) All contributions paid by solicitors under section 43 of, and Schedule 3 to, the Act;
  - (b) All interest, dividends and other income, and accretions of capital arising from investments of the Fund;
  - (c) All moneys borrowed for the purposes of the Fund;
  - (d) All sums received by the Society in respect of contracts of insurance entered into under paragraph 3 of Schedule 3 to the Act;
  - (e) All sums recovered by the Society in consequence of the provisions of subparagraph (2) of paragraph 4 of Schedule 3 to the Act; and
  - (f) Any other moneys which may belong or accrue to the Fund or be received by the Society in respect of the Fund.
- (2) There shall from time to time be paid out of the Fund -
  - (a) The expenses of constituting and administering the Fund, including the remuneration of officers and employees of, and other expenses incurred by, the Society in relation to the Fund under or in the exercise of powers conferred by the Act;
  - (b) All grants made by the Society under section 43 of the Act;
  - (c) All premiums payable by the Society under contracts of insurance entered into under paragraph 3 of Schedule 3 to the Act;
  - (d) All interest and other sums payable in respect of sums borrowed by the Society for the purposes of the Fund; and
  - (e) Any other moneys payable out of the Fund in accordance with the Act or any Rules relating to the Fund made thereunder.
27. (1) Any person who wishes to apply to the Society for a grant from the Fund in respect of a loss shall, as soon as is reasonably practicable after the date on which the loss first came to his or her knowledge and in any event within 12 months of that date, make an application in or substantially in the form set out in Schedule 3 to these Rules and shall deliver the same to the Secretary.
- (2) The Council shall be entitled to treat an application as having been abandoned if such documents and other evidence as the Council may demand in terms of paragraph 4(1) of Schedule 3 to the Act are not produced to it within three months of any such demand.

#### **Council may require institution of proceedings**

28. The Council before deciding whether or not to make a grant out of the Fund may require in respect of any application the pursuit by the applicant of any civil remedy

which may be available in respect of the loss or the taking by him or her of steps with a view to the institution of criminal proceedings in respect of the dishonesty leading to the loss or the making of a complaint to the Scottish Solicitors' Discipline Tribunal.

**Council may waive requirements**

29. The Council may, in any case on cause satisfactory to it being shown, waive any of the provisions of this Part of these Rules as regards the time limits within which an application may be made or oral evidence may be tendered or documents or information produced.

**Notice by Council**

30. Any requirement of the Council under this Part of these Rules may be communicated by a notice in writing which may be delivered personally or sent by recorded delivery post to the addressee at his or her last known address. Any such notice sent by post shall be deemed to have been received by the addressee within forty-eight hours of the time of posting.

**ACKNOWLEDGEMENT**

This annotated version of the Rules is reproduced by kind permission of W. Green & Son Ltd.

**SCHEDULE I  
FORM OF CERTIFICATE**

(IN RESPECT OF AN ACCOUNTING PERIOD ENDING ON OR AFTER 1 AUGUST 2006).

The Secretary  
The Law Society of Scotland  
26 Drumsheugh Gardens  
Edinburgh EH3 7YR

Dear Sir

I/We confirm that, within the premises at (Note(a)), .....being the address at which I/we carry on practice as solicitor(s) that I/we have maintained the necessary books of account, bank passbooks, bank statements, deposit receipts including building society or local authority deposits, statements, deposit receipts and other accounting records required by the Solicitors (Scotland) Accounts etc. Rules 2001 for the accounting period from ..... to .....and I/we certify subject to the points referred to under item 4 of additional matters noted overleaf:-

Note (b)

- 1) That the accounting records are up to date and balanced as at the last day of the accounting period, and
- 2) That the accounting records, to the best of my/our knowledge and belief, are in accordance with the terms of the Solicitors (Scotland) Accounts etc. Rules 2001, and
- 3) That all outstanding reconciling entries noted as at the balance dates disclosed overleaf under Rules 9 and 10 have been entered in the records or confirmed as correct, and
- 4) That the following Powers of Attorney were held by the undernoted or granted in favour of the undernoted during the accounting period:-

GRANTER	ATTORNEY	DATE GRANTED
---------	----------	--------------

And

- 5) That during the said accounting period the Designated Cashroom Partner(s) in terms of Rule 12 of the Solicitors (Scotland) Accounts etc. Rules 2001 was/were as follows:-

NAME	DATE DESIGNATED	DATE DESIGNATION CEASED
------	-----------------	-------------------------

- 6) That during that time the Money Laundering Reporting Officer(s) in terms of Rule 24 of the Solicitors (Scotland) Accounts etc. Rules 2001 was/were as follows:-

NAME	DATE APPOINTED	DATE APPOINTMENT CEASED
------	----------------	-------------------------

I solemnly and sincerely declare that the information given by me in this Certificate is true to the best of my knowledge and belief.

CURRENT DESIGNATED CASHROOM PARTNER

(FULL NAME).....

SIGNATURE..... DATE.....

SECOND SIGNATORY

(FULL NAME).....

SIGNATURE..... DATE.....

## ADDITIONAL MATTERS

1. Client account reconciliations as at ..... ..
- Note (c)
- |   |        |        |
|---|--------|--------|
| (i) (a) Monies held on general client account | £..... | £..... |
| (b) Monies due to clients                     | £..... | £..... |
| (c) Surplus or deficit                        | £..... | £..... |
| (ii) (a) Funds held for named clients         | £..... | £..... |
| (b) Monies due to named clients               | £..... | £..... |
| (iii) (a) Loans for named clients             | £..... | £..... |
| (b) Balances due by named clients             | £..... | £..... |
- Note (d).
2. Firm's account balances
- |                 |        |        |
|-----------------|--------|--------|
| Due to the firm | £..... | £..... |
| Due by the firm | £..... | £..... |
3. If the assistance of an external accountant was needed to prepare this Certificate, please indicate the scope of the assistance here. (If none, state NONE):-
- Note (e)
4. Other matters which require to be reported:-(If no other matters, state NONE)

### NOTES

- (a) State addresses of all places of business of the solicitor or firm of solicitors in respect of whom the Certificate is granted.
- (b) This balance is to be a balance of the whole books covering client and non-client accounts.
- (c) These dates are those quarterly dates required to be reconciled under the terms of Rule 10.
- (d) These balances should disclose bridging loans taken on behalf of named clients under Rule 20.
- (e) It is anticipated that many solicitors will instruct an external accountant to assist them in the checking of the accounting records and/or the preparation of the Certificate in respect of investment business. If the services of an external accountant are required you should indicate the extent of the help offered. The following tasks are examples of the assistance which may be obtained from the accountant:-
  - 1) The preparation of day books, ledgers and other records for client's or firm's accounting records; or
  - 2) Reconciling the funds' position under Rules 9 and 10; or
  - 3) Testing for compliance with aspects of the Accounts Rules as agreed per a letter of engagement; or
  - 4) Balancing the client's or firm's accounting records; or
  - 5) Conducting a review of compliance with all aspects of the Accounts Rules in support of the solicitor's certification of compliance with the Rules.

**SCHEDULE 2a  
FORM OF CERTIFICATE  
Solicitors (Scotland) Accounts etc Rules 2001**

(In respect of an Accounting Period for which **no client monies have been held**)

**NAME:** .....

**BUSINESS ADDRESS:**

.....  
.....  
.....

**Tel No:** ..... **Fax No:**.....

I hereby confirm to the Council of the Law Society of Scotland that:

- (Note 1) (a) I/We have contributed to the Guarantee Fund in respect of the practice year;
- (b) I/We submit accounts to the Scottish Legal Aid Board for payment to my/our own account;
- (c) I/We make any payments due to third parties from my/our bank account in advance or not later than the date on which the matching remittance is lodged in the firm bank account.

- (Note 2) (d) I/We have not handled client monies during the accounting period

from:.....

to:.....

- (e) If circumstances change with the result that I/we require to hold or intronit with client monies, I/we shall immediately advise the Council.

I solemnly and sincerely declare that the information given by me in this Certificate is true to the best of my knowledge and belief.	
CURRENT DESIGNATED CASHROOM PARTNER	
(FULL NAME).....	
SIGNATURE.....	DATE.....
SECOND SIGNATORY	
(FULL NAME).....	
SIGNATURE.....	DATE.....

Note 1. The current practice year for this figure commences on 1st November within the accounting year which includes the six-month period shown at item (d);  
Note 2. The accounting period must be six months or less and follow immediately on from the previous accounting period without a gap or overlap in the dates concerned.

**SCHEDULE 2b  
FORM OF CERTIFICATE  
Solicitors (Scotland) Accounts etc Rules 2001**

(In respect of an Accounting Period ending on or after 1 August 2006 for which **no client monies have been held**)

**Name** .....

**Address** .....

.....

**Tel No.** .....

**Fax No.** .....

**E-mail** .....

---

I hereby confirm to the Council of the Law Society of Scotland:

- (a) I have contributed to the Guarantee Fund in respect of the practice year; (\*Note 1)
- (b) I act solely as an agent for other solicitors, or I render fee notes directly to private clients before being paid a fee for work done.
- (c) I do not submit accounts to the Scottish Legal Aid Board and have not received any fee directly from them.
- (d) I have not handled client monies during the accounting period and have not operated a client bank account.
- (e) If circumstances change with the result that I require to hold or intromit with client monies, I shall immediately advise the Council.
- (f) Accounting Period: (\*Note 2)

From.....To.....

I solemnly and sincerely declare that the information given by me in this Certificate is true to the best of my knowledge and belief.

FULL NAME .....

SIGNATURE .....

DATE .....

\*Note 1. The current practice year for this figure commences on 1<sup>st</sup> November within the accounting year which includes the six-month period shown at item (e).

\*Note 2. The accounting period must be six months or less and follow immediately on from the previous accounting period without a gap or overlap in the dates concerned.

**SCHEDULE 3**

**THE LAW SOCIETY OF SCOTLAND  
THE SCOTTISH SOLICITORS' GUARANTEE FUND**

Application Form for a Grant out of the Scottish Solicitors' Guarantee Fund

To: THE LAW SOCIETY OF SCOTLAND  
26 Drumsheugh Gardens  
Edinburgh, EH3 7YR  
LP-1, Edinburgh-1

I, [full name of applicant] .....  
Designation .....  
Address .....  
.....  
Post Code .....  
Telephone Number .....

hereby apply to the Council of the Law Society of Scotland that, in the exercise of the absolute discretion conferred upon them by the Solicitors (Scotland) Act 1980, they make to me a grant of £.....

or such other sum as they may think proper out of the Scottish Solicitors' Guarantee Fund by way of compensation for a pecuniary loss sustained by me by reason of the dishonesty of:-

Name .....  
Designation .....  
Address .....  
.....

Firm .....  
Status in firm, if known .....  
Date the original Notice of claim was sent to the Secretary .....

**SCHEDULE OF PARTICULARS**

**Please state as clearly and concisely as you can the answers to the following questions:-**

1. Please give the date or dates upon which the money or other property in respect of which your loss has been sustained came into the possession of the Solicitor, or his or her employee.

.....

2. Please give full particulars of such money or property.

.....  
.....  
.....  
.....

3. Please explain why you allege dishonesty.

.....  
.....  
.....  
.....

4. State the date which your loss first came to your attention .....

5. Explain briefly how this happened.

.....  
.....  
.....

6. If you have any documents which you think would help your claim, please list them here and enclose a copy of each.

.....  
.....  
.....

7. Are you aware of any other application that may be made in respect of this loss?  
Yes/No \*please delete as appropriate

If Yes, please give name and address of other applicant.

.....  
.....  
.....

8. Are you aware of any civil, criminal or disciplinary hearings arising out of this matter?

Yes/No \*please delete as appropriate

If Yes, please give the details, including the result, if known.

.....  
.....  
.....

9. Have you taken court or other proceedings in respect of your loss?

Yes/No \*please delete as appropriate

(a) If Yes, please give brief details.

.....  
.....  
.....

(b) If No, are you considering taking court or other proceedings in respect of your loss?

Yes/No \*please delete as appropriate

10. Do you have a Solicitor acting on your behalf?

Yes/No \*please delete as appropriate

If Yes, please give his name, firm, address and telephone number

Name .....

Firm.....

Address .....

Post Code .....

Telephone Number .....

11. Is there **any other relevant information** which you think would be of assistance to the Guarantee Fund Committee in considering your application?

If so, please detail.

.....  
.....  
.....

I solemnly and sincerely declare that the information given by me in this application is true to the best of my knowledge and belief, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

..... Claimant

Declared at .....

on (date) .....

before me .....

(this application should be signed in the presence of a Notary Public, Commissioner for Oaths, Justice of the Peace or other person authorised to administer oaths unless the amount claimed in total is less than £250).

**INDEX FOR THE SOLICITORS (SCOTLAND) ACCOUNTS, ACCOUNTS CERTIFICATE,  
PROFESSIONAL PRACTICE AND GUARANTEE FUND RULES 2001**

<i>Index</i>	<i>Rule Number</i>
Accounting period	2(1)
Accounts—keeping records	8
Attorney	See Powers of Attorney
Automated clearing system	2(1)
Balances—books	2(1)
Balances—client ledgers	2(1), 4(1)(a), 9(2)
Bank	2(1), 4(2), 4(3)(a), 7(c), 9(1)
Books	8(5), 8(7)
Books—separate records	16
Bridging loans	8(1)(a)(iii), 19(1), 20
Building Society	2(1), 4(2), 4(3)(a), 7(c)
Cash	7(a)
Certificate	2(1), 12(3), 14, 15, 16, 18
Certificate—Designated Cashroom Partners	12(3)
Certificate—Power of Attorney	8(2), 11(3)
Client account	2(1), 4(1), 4(2), 7, 8, 16
Client ledger	4(1), 4(2), 4(3)(c), 7, 8(3), 10(2)
Client money	2(1), 4(1), 4(2), 4(3), 6(1), 8(1), 8(2), 10(1)
Computerised records	8(1), 8(2), 8(6), 10(1)
Connected persons—lending	22(1)
Delivery of Certificate	14(1), 14(2)
Deposit Accounts	2(1), 10(1)
Designated Cashroom Partner	See Certificate and Partner
Drawing from client account	6(1), 6(3)
Employed solicitor	3
Fees	6(1)(d), 7(f), 11(5)(b)
Firm's books	8(4), 8(5)
Float	4(1)(a), 4(2), 4(3)(c), 5(a), 5(b), 6(1)(f), 9(2)
Fund	25(a)
Inspection fees	19(6)
Inspections and investigations	18, 19
Inter-client loans	6(1)
Inter-client transfers	8(3)(b)
Interest	11
Joint deposits	10(1), 19(1)
Keeper of the Registers	2(1), 6(2), 11(5)(a)
Lien, right of	13
Loans—acting for lenders	22(1), 22(2), 22(3)(b), 22(4)
Loans—bridging	20
Loans—from clients	21
Loans—inter-client	6(1)
Loans—to clients	6(1)(b), 7(e), 22(3)
Loss	25(c)
Money laundering	2(1), 24(1)
Money Laundering Regulations	2(1), 24(1), 24(2)
Money laundering—relevant financial business	2(1)
Money laundering—reporting officer	See Money Laundering Regulations
Notice of inspections and investigations	19(5)
Notice to uplift funds	4(3)(a), 4(3)(b)
Notices under Parts II and III of the Rules	17
Notices under Part IV of the Rules	30
Other Business—money laundering	2(1)
Other funds	4(2), 10(1), 10(2), 15(1)
Overdraft—authorized	4(3)(c), 8(1)(a)(iii), 19(1)
Partner	2(1), 12
Partner—Designated Cashroom	11(3), 12(2)
Pay into client account	4(1)(b)
Powers of Attorney	8(2), 19(1), 23(1), 23(2), 23(3)
Print-out	2(1), 8(6)(a)

Recording Dues	6(2), 11(5)(a)
Regulations—Money Laundering	2(1), 24(1), 24(2)
Relevant financial business	2(1)
Reporting Officer	See Money Laundering Regulations
Secretary	25(b)
Separate Offices	16
Signing	15
Solicitor	2(1)
Surplus	See Float
Transfer Record	8(3)(b)