



## Terms of Engagement

These Terms apply to all services including subsequent services carried out by Franklin Law on your behalf

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### Purpose

This document explains what you can expect from us, and what you agree to when we work for you. It includes information that we need to tell you about. It applies to any work we do for you. If we vary these terms, we will send you an amended document. If you have any questions about any of the terms, please discuss these with the person you are dealing with.

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### Confidentiality & Privacy

We will keep confidential all information concerning you or your affairs which we acquire while acting for you. We will not disclose any of this information except:

- as authorised by you; or
- as is necessary or desirable to carry out your instructions; or
- as required by law or the New Zealand Law Society's Rules of Conduct & Client Care; or
- as required by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 or
- as required by the United States Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard (CRS).

We may collect and hold information about you for the purposes of: providing our services; obtaining credit information or other references; or advising you about issues that may affect you.

Under the Privacy Act 2020 you may access the information we hold. A full copy of our [Privacy Policy](#) is set out on our website. If you are unable to access our policy, we will provide a copy to you on request.

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### How we set our fees

We will charge a fair and reasonable amount taking into account: the time and labour expended; the skill, specialised knowledge and responsibility required; the project's importance, complexity, urgency or risk; the need for a third party to rely on our advice; reasonable costs of running a practice and any other factors unique to the transaction.

We will provide an estimate of our fee if requested. We will advise you if we have to provide additional services outside the agreed scope and, if requested, give you an estimate of the likely amount of further costs.

If you apply for and are granted legal aid, payment of our fees will be met by the Ministry of Justice Legal Aid in accordance with the terms and conditions of your legal aid grant. You will receive separate correspondence regarding your legal aid grant. If Legal Aid is withdrawn, or an increase to your grant refused for any reason, you will be personally responsible for payment of our costs in accordance with our hourly rates outlined above.

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### Disbursements and Sundry Costs

We may have to pay disbursements to third parties such as LINZ, Companies Office, Ministry of Justice, LIM fees, couriers and travel costs. We will notify you if we require an upfront payment to cover these expenses.

We may charge a separate office fee (sundries) to cover costs of printing, photocopying, postage and communication charges.

To meet our obligations under the Anti-Money Laundering and Countering of Terrorism Financing Act 2009, there is a one off \$50 service charge per individual upon whom CDD is conducted. For Trust clients, a one off \$250\* service charge for conducting Enhanced CDD will be charged (\*up to 4 individuals, \$50 per individual thereafter).

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## Prepayment

We may ask you for payment up front to cover costs we will incur on your behalf (e.g., disbursements) or as a deposit for anticipated work.

We may choose not to commence work until we receive your prepayment or deposit.

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## Terms of Payment

We will generally send you an invoice monthly unless we have agreed a different arrangement. Accounts are payable within 14 days of invoice date. Any agreement to a request for payment terms outside our standard 14 days will be binding on us only if approved in writing by a Partner or the Practice Manager.

If the account is not paid by the due date and we have received no satisfactory explanation we may:

- Charge default interest on the overdue amount at a rate being paid at that time on our credit card facility; and
- Initiate action to recover the debt, including court proceedings, at your expense; and
- Stop acting for you.

We reserve the right to off-set all amounts owing to us against funds or other property we hold on your behalf. Fees and disbursements for conveyancing matters are generally deducted from settlement proceeds.

Refer to our website for Payment Options.

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## Security and Authority to Deduct

We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us to deduct fees, expenses or disbursements, for which we will provide an invoice, from funds held on your behalf in our trust account.

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## Third Parties

Although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may, at your request or with your approval, be directed to a third party, you will remain responsible for payment to us if the third party fails to pay us.

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## Bank Deposits and Payments

The New Zealand payment systems process bank deposits and payments 365 days a year. We will process the bank deposits and payments during our office hours of 8.30am to 5pm on business working days only.

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## Trust Account

We will maintain a trust account for all funds we receive from you. If you require your funds to be placed on interest bearing deposit (IBD) prior to this occurring, you will be required to provide us with:

- your written instruction to place them on interest bearing deposit; and
- your IRD number; and
- your Tax Rate; and
- complete and return to us a Westpac Customer Foreign Tax Residency Certification form. For further information refer to the FATCA and CRS section of these Terms of Engagement.

We charge an administration fee of 10% of all interest earned on funds you deposit through our banks interest bearing deposit scheme.

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## **AML/CFT**

We are required under the Anti-Money Laundering and Countering of Terrorism Financing Act 2009 (AML/CFT Act) to carry out Customer Due Diligence and a Risk Assessment in respect of all prospective clients and matters before we commence work for a client.

We have engaged RealAML to assist us with efficiently completing the verification process. RealAML will contact you directly to request the required information and we ask that you engage with them promptly so that we can begin our work as quickly as possible.

Our obligations under the AML/CFT Act are ongoing throughout the life of our client relationship and we may from time to time seek updated or further and additional information from you for the purposes of meeting our compliance obligations under this Act. If the information is not supplied promptly, we may be obliged to cease work for you until the information sought is provided.

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## **FATCA and CRS**

Under the United States Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard (CRS). Our bank is required by law to obtain certain information about funds held in our trust account and advise the IRD, who may in turn forward the information to foreign tax authorities. The IRD has the power to compel any person, including our firm, to supply such information to the IRD. The FATCA/CRS information required relates to funds held in our trust account in Interest Bearing Deposit (IBD) for an entity or individual that is a foreign tax resident. Entities are also required to disclose whether they conduct active or passive business and whether they are financial institutions.

You agree and consent to us providing any information held by us in relation to your FATCA/CRS status or matters to the IRD and our bank.

You acknowledge and agree that we are unable to place funds in our trust account on IBD unless we have received your signed Westpac Customer Foreign Tax Information form. This means that interest will not be earned on your funds until we receive the signed form.

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## **Professional Indemnity Insurance & Fidelity Fund**

We hold professional indemnity insurance which meets the standards specified by the New Zealand Law Society. In addition, the Lawyers' Fidelity Fund provides cover up to specified maximum sums (currently \$100,000 excluding investment monies) for clients who suffer financial loss by theft in certain circumstances. Our liability for any claim for loss by you shall be limited to the amount covered by our professional indemnity insurer, details of which we will provide to you upon request.

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## **Complaints**

We take clients' complaints seriously and maintain a procedure to ensure that the problem is dealt with fairly and promptly. In the first instance you should contact the lawyer who is handling or overseeing your matter. If you do not wish to refer your complaint to that person or you are not satisfied with that person's response, please contact our Practice Manager. If you are still not satisfied with the response from our firm you can make a formal complaint to the New Zealand Law Society, contactable on 0800 261 801 or through their website [www.lawyers.org.nz](http://www.lawyers.org.nz) .

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## **Conflict of Interest**

We have policies in place to identify and respond to conflicts of interest. If a legal conflict of interest arises in relation to any matter on which you have instructed us, we will contact and consult with you as soon as possible and follow the procedures set out in the Law Society's Rules of Conduct and Client Care.

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## **Joint and Several Liability**

Where the engagement has been entered into by an agent on behalf of the client the agent and the client will be jointly and severally liable for all payments due to us under the engagement.

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**Termination**

You or we may terminate our engagement at any time. If our engagement is terminated you must pay us all fees and expenses due up to the date of termination.

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**Guarantee**

If the client is a company or trust, the authorised signatory of the client irrevocably guarantees and promises to pay as principal debtor all amounts owed by the client to us and acknowledge this guarantee may be enforced directly by us without first needing to pursue remedies against the client.

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**Retention of files and documents**

You authorise us to destroy all files and documents (other than documents held in safe custody for you) 2 years after the engagement ends, or earlier if we have converted those files and documents to an electronic format. You may uplift your files at any time prior to destruction. Any deeds, wills or other records we agree to store for you will be kept until we reasonably decide this is no longer necessary. We are entitled to hold your file and documents until any fees owing to us for any reason are paid in full.

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**Client care and service information**

Our commitment to you is that we will:

- Act competently, in a timely way, and in accordance with instructions 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 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 the complaint promptly and fairly.

The obligations lawyers owe to clients are described in the [Rules of Conduct and Client Care for Lawyers](#). Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.

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**Your acceptance**

Your Name/s

Your Signature/s

Date

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