

## GENERAL TERMS OF ENGAGEMENT

*(Revised as at 7 May 2019)*

At Cook Morris Quinn we are committed to providing excellent legal services and strive to ensure accessibility, quality and turnaround. The purpose of this document is to set out the terms and conditions which govern our relationship with you and to provide you with an understanding of how we work and expectations we have of each other.

If you have any questions or concerns about these terms, you should contact us promptly before we commence working for you. This is important because any instructions we receive from you will be on the basis that you have read, understood and accepted these terms of engagement.

### **How We Work**

We provide legal services across a wide variety of disciplines. To ensure that you are provided with the best possible service, we allocate teams to concentrate on specific areas of law. We have the following dedicated teams:

- ◆ Commercial law and business advice.
- ◆ Property conveyancing.
- ◆ Trusts and estate planning.
- ◆ Litigation and dispute resolution.
- ◆ Employment law.
- ◆ Relationship property and domestic law.

The partners of the firm are responsible for the supervision of each team and the management of the relationship with each client. The partners will delegate work to the most appropriate team and author having regard to the level of expertise and technical specialisation required. In the event that any issue arises out of your relationship with one of our authors, we invite you to immediately discuss the matter with the supervising partner.

We will advise you at the commencement of our instructions which author will be working on your matter as well as the name of the supervising partner.

### **Your Instructions**

Our ability to provide you with the best possible legal service is enhanced by receiving clear and full instructions from you.

To assist us it is helpful for you to provide

- ◆ Clear instructions, if possible in writing.
- ◆ Any important time limits that we need to be aware of.
- ◆ Your expectations about what you want to achieve.
- ◆ Full details of where we can contact you at any point of the day.

From time to time, you may wish to change your instructions or review where your matter is up to. We invite you to keep in regular contact with us to ensure that we are aware of your most recent instructions. Often work on your matter will proceed to ensure that your interests are protected and will include attendances that you may not be aware of at the time. If you wish us to stop work at any time, you need to let us know immediately. Otherwise we may continue working on your matter.

## How We Charge

Our fees are charged in accordance with the guidelines laid down by the Rules of Professional Conduct of the New Zealand Law Society. We take into account the following:

- ◆ the time spent
- ◆ the skill and knowledge and responsibility required
- ◆ the value of the property involved
- ◆ the complexity, novelty, importance and urgency of the matter
- ◆ the reasonable cost of running a law practice
- ◆ the result
- ◆ the importance of the matter to you
- ◆ the number and importance of the documents prepared or perused

The relevant importance of the factors set out above will vary according to the particular circumstances of each transaction.

To assist us in determining the appropriate charge for work done for you, each author has an hourly charge-out rate and keeps a record of all the time spent working for you. We charge in units of six minutes (i.e. 10 units per hour) and our minimum charge for an item of work is one unit.

## Additional Charges

Usually we will charge you not only for the legal services rendered but also for other ancillary services provided. These can include use of our facsimile and photocopying services and materials, telephone calls including long-distance calls and mobile calls, postage charges, storage charges and some secretarial services. To provide certainty we capture those additional costs as part of a bureau / office service fee.

We are often required to pay disbursements on your behalf during a transaction. They can include courier fees, filing and registration fees with government agencies, barrister's fees, external document management suppliers, and any other type of agency fee that we are required to account for. Those charges, if applicable, will be specifically itemised on your invoice, or the invoices provided directly to you for payment.

In some cases, usually involving significant document based litigation, electronic storage and management of documentation is necessary to efficiently comply with Court requirements and to enable preparation of documentation to be submitted to the Court and preparation for trial processes and other interlocutory applications. Our firm outsources to litigation support providers, documentation and materials which are then converted to a form that allows for electronic management and provision electronically of the same to clients, the Courts, and, as necessary, other parties to litigation. The costs of the outsourcing, and maintenance of relevant electronic tools, will be invoiced separately to you as a client. The extent of those costs will vary from case to case, often dependent on the volume of documentation involved. If such services as described are required, we will discuss with you the need for the same and likely costs to be incurred.

Where we are being asked to pay money out on your behalf, we will request payment from you for those amounts beforehand so that payment can be made. For example, that can include payment for counsel/barrister expenses, court filing fees, LIM reports, valuations and registration fees.

## Estimate of Fees

Where possible we will give you an estimate of the fees you are likely to incur with us. The estimate will be our "best guess" as to what the fee is likely to be. If however the work does not proceed as we expected due to unexpected complications or the work proves to be more complicated than originally anticipated, we will charge for all the additional work done. Any estimate given will be on a GST exclusive basis.

Where we become aware that the estimate is likely to be exceeded we will advise you of the reasons and obtain your further instructions.

Sometimes, especially in lengthy, urgent or complex matters we may ask for a substantial deposit before work can commence. That deposit will be held in an interest-bearing account and applied to our final invoice on your matter. In the meantime, we expect that our monthly invoices will be met in full as per the terms and conditions set out below.

## **Our Billing Policy**

It is our normal policy to bill you on a monthly basis. This assists by spreading payments over time and also enables you to keep track of how much the work is costing. Each invoice we send you is separate from any other.

Generally property and similar transactional matters may be billed at the time of settlement or on completion of the work. However we may require payments prior to that to meet additional charges that we are required to pay out on your behalf.

If you require any clarification in relation to the invoice you receive from us, please let us know immediately. It is to the benefit of our relationship with you that any issues regarding our accounts are dealt with as soon as they arise.

## **Payment of Our Invoices**

Our accounts are due within seven days of the issue of our invoice. If we are holding money for you (for example from the sale of your house) we may deduct the account from that money and will provide you with a full statement.

You can pay any invoice by bank transfer to Cook Morris Quinn Trust Account at ASB Bank, West Auckland Commercial Banking, Account Number 12 3109 0019796 02, by cheque (payable to "Cook Morris Quinn Trust Account"), Eftpos or credit card (Visa, MasterCard). However, a surcharge of up to 1.8% of the total transaction amount may be added to payments made by Visa and Mastercard to cover bank fees incurred.

If you anticipate any difficulty in paying our accounts for whatever reason you must immediately contact us upon receipt of our invoice to discuss the matter.

## **Late Payment**

In the event that payment of our accounts are not made on time, we reserve the right to immediately stop working on any matters where we are working for you.

We also have the right to retain possession of your file and any documents belonging to you until we are paid.

If you default in your payment obligations to Cook Morris Quinn, then we reserve the right to provide information of such default to Equifax New Zealand (formerly Baycorp and Veda Advantage) to list your default and to seek recovery thereof. Equifax New Zealand may also give information about your default to other Equifax New Zealand customers.

If payment is late, we may charge interest on the unpaid account at 1.5% per month until payment is received and we reserve the right to pass on to you all legal and collection costs incurred in recovering payments from you.

## **ANTI MONEY LAUNDERING**

### **Why we need to ask you for information**

New Zealand has 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.

Recent changes to the AML/CFT Act mean that 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 about a range of things. This is part of what the AML/CFT law calls "customer due diligence".

There is time and effort required to comply with those obligations and accordingly we will charge you for our reasonable time for such attendances.

## 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 driver's licence or your 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 associated 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.

### Information About You

You authorise us to:

- (a) Collect and hold personal and credit information about you from any source we consider appropriate. We may use this information to determine your credit worthiness, credit history or credit capacity, for debt collection or any related purpose, or for providing you with information about our services; and
- (b) Disclose the personal and credit information to anyone else (including our related parties) for the purposes set out above.

You must notify us of any changes in circumstances that may affect the accuracy of any personal or credit information that we have collected about you under these Terms.

If you are an individual, you may access and request correction of any personal or credit information that we have collected about you, subject to the restrictions in the Privacy Act 1993.

### Termination

You may terminate our representation at any time, with or without cause by notifying us in writing. If such termination occurs, papers and property which you have provided us will be returned promptly upon receipt of payment of outstanding fees and costs. Outline files pertaining to the transaction will be retained.

We are subject to the Code of Professional Responsibility for Barristers and Solicitors which lists several types of conduct or circumstances that require or allow us to withdraw from representing a client, including for example: non-payment of fees and costs, misrepresentation or failure to disclose material facts, action contrary to our advice and conflict of interest with another client. We try to identify in advance and discuss with you a situation which may lead to a withdrawal and if withdrawal ever becomes necessary we would give written notice of that occurring.

**Commissions**

If we place funds on an interest-bearing deposit in our trust account on your behalf, we may charge a reasonable commission out of the interest for arranging and administering the deposit.

**Storing Records**

Generally we are required to store your paper file for 7 years after the date of our final invoice. After that time we may destroy it, except for any documents we agreed to hold for you in safe custody. However we do not destroy property relationship files or documents such as wills, trust deeds and powers of attorney. Records of your transactions through our trust account are stored in a computerised form. You may have access to all records relating solely to your investment money and investment property without charge during normal business hours.

Your paper file is stored off site once the matter is completed. In the event that we are required to retrieve your file for any reason (including a request from you to uplift that file) a charge of \$35.00 will be made to you to cover the costs of such retrieval.

**Client Information**

Attached is information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society.

**General**

We trust that the above terms and conditions provide clarity about our relationship with you. If you have any questions about these terms of engagement please let us know. We look forward to working with you and providing you with a service that is, in all respects, excellent.

## INFORMATION FOR CLIENTS

Set out below is the information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("Law Society").

### 1. Fees

The basis on which fees will be charged is set out in our letter of engagement. When payment of fees is to be made is set out in our Standard Terms of Engagement.

We may deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.

### 2. Professional Indemnity Insurance

We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.

The liability of Cook Morris Quinn to you in this matter shall not exceed the professional indemnity insurance cover held by Cook Morris Quinn at the relevant time in the event of any claim being made against the firm by you.

### 3. Lawyers' Fidelity Fund

The Law Society maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. Except in certain circumstances specified in the Lawyers and Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

### 4. Complaints

We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.

If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to Andrew Cook or Chris Morris.

They may be contacted as follows:

- ◆ by letter;
- ◆ by email to [andrew.cook@cmqlaw.co.nz](mailto:andrew.cook@cmqlaw.co.nz) or [chris.morris@cmqlaw.co.nz](mailto:chris.morris@cmqlaw.co.nz);
- ◆ by telephoning Andrew Cook on 831 0033 or Chris Morris on 377 7093.

The Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone **0800 261 801** and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

5. **Persons Responsible for the Work**

The names and status of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in Appendix A.

6. **Client Care and Service**

The Law Society client care and service information is set out below.

Whatever legal services your lawyer is providing, 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.*

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.

If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call **0800 261 801**.