

Analysis of the handling of client money in Australia, Singapore, Hong Kong and New Zealand

Question	Australia	Singapore	Hong Kong	New Zealand
Do lawyers hold trust monies? If so, how?	Monies that are entrusted to a law practice in the course of legal practice or in connection with the provision of legal services are regulated as trust monies. Trust monies include: money received for legal costs in advance of providing legal services; monies received where the client provides a written direction as to how that money is to be deposited and dealt with; money received from a client with instructions to pay or deliver it to a third party; and money received that is subject to a power exercisable by the law practice as to how the money is to be dealt with. Money received by a law practice for legal service provided, and after a bill has been given, is not trust money, nor is money entrusted to or held by a law practice in connection with a managed investment scheme or mortgage financing.	Lawyers hold client money in a current or deposit account maintained in the name of the lawyer at a bank or approved finance company. The title of the account should have the word 'client' appearing.	Lawyers in Hong Kong may hold client money but they are required to pay the client money into a client account under the Solicitors' Accounts Rules, Cap. 159F ("the SAR").	Lawyers in New Zealand may hold client (trust) money but must follow the trust account provisions of the Lawyers and Conveyancers Act 2006 ("the Act") and the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 ("The Regulations"). A trust account is defined in section 6 of the Act as meaning, in relation to a practitioner or incorporated firm, "any trust account at a bank in New Zealand that is a trust account in the name of that practitioner or incorporated firm". Trust bank accounts must be designated "trust account", and the bank and other interested parties must be notified that the money in each trust bank account is trust money.
Do lawyers receive training in the handling of money? If so, what kind of training?	The compulsory practical legal training required to be undertaken as a prerequisite for admission to the legal profession includes a subject on Trust and Office Accounting. A person must be able to demonstrate knowledge and skills in: understanding relevant fiduciary and other duties, including statutory duties and procedures in relation to receiving, disbursing, and accounting for trust monies, including the rendering of costs and bills. A solicitor may only receive trust money if he or she is a principal of the law practice and is specifically authorised to receive trust by his or her practising certificate. A number of Australian jurisdictions require a solicitor to successfully	Lawyers who are sole proprietors/ partners or directors are required to go through training on various subjects including keeping accounts known as the LPMC or Legal Practice Management Course. The training on accounts is done by the Law Society of Singapore . We engage an accountant familiar with the handling of accounts to do the training which is a seminar style training and I, also, as head of the Conduct Department of the Law Society of Singapore, conduct a session on the disciplinary issues that can result from failure to comply with proper accounting practices. Further, all lawyers must produce a satisfactory accountant's report on their accounts before a practising certificate can be	No training is required to be attended by lawyers in Hong Kong in the handling of client money although there are courses teaching the SAR in graduate Certificate in Laws and Head IV of the Overseas Lawyers Qualification Examination is a test on solicitors accounting. In addition, there is a limited training in that Law Society holds Continuing Professional Development courses and Risk Management Education Program to update lawyers and registered foreign lawyers on the SAR. The Law Society has also issued Practice Directions ("PD") and the Manual on Solicitors' Accounting to set out the guidelines for accounting procedures and systems for the proper control of client money.	Before commencing practice on his or her own account, a lawyer must complete a course of training, and pass an examination in trust accounting, prescribed by the Law Society. This training must be undertaken within three years of taking up responsibility as a Trust Account Supervisor (TAS). A firm in practice must have one principal registered with the Law Society as the Trust Account Supervisor (TAS). More than one lawyer for a firm can be TAS qualified but for this qualification not to expire in the three-year period following the TAS course, it is necessary for the individual to have actually undertaken the TAS role within the firm continuously for a period of at least nine months. To meet best practice it is suggested that firms who have more than one TAS

	complete a separate legal practice training course before authorisation to receive trust money will be granted.	issued to them during renewal of their practising certificate in the month of March every year as practising certificates issued cover the period 1 st April to 31 st March of each year	Furthermore, Monitoring Accountants who are qualified Certified Public Accountants (“CPA”) are employed by the Law Society and are authorised by the Council of the Law Society to carry out routine visits to newly established law firms and to provide assistance and advice in ensuring the accounting systems established by them comply with the SAR and the PD.	qualified principal, should rotate the TAS role (such as year about).
If lawyers don’t hold trust monies, who does and how?	If a client decides not to entrust money to a law practice, how that money is held and disbursed would be a matter entirely for the client. Many law practices in Australia have decided not to maintain trust money accounts.	Only lawyers can hold client monies. Some lawyers chose not to in which case the client hold their own monies and make out payments as and when required directly to the relevant parties in the transaction. If a lawyer chooses not to hold any client monies, he can apply for exemption from providing an accountant’s report during renewal of his practicing certificate. The lawyer can opt to pay over stakeholding money or conveyancing money received on behalf of clients to be held by the Singapore Academy of Law. The latter is a statutory body formed as a promotion and development agency for Singapore’s legal industry	In Hong Kong, the authorized institutions as referred to in the Banking Ordinance may hold money for their clients but they will be subject to the review and regulations of the Hong Kong Monetary Authority.	Lawyers may choose not to hold money, in which case they will need to make a declaration to the NZLS to that effect, however they will be deemed to have received money belonging to another person if: that person, or a bank or other agency acting for or on behalf of that person, deposits funds by telegraphic or electronic transfer into the bank account of the lawyer or firm; or a person or body related to the lawyer; or a lawyer takes control of money belonging to that person.
Do lawyers/escrow agents have to report to the regulator about these monies? What do they have to report and when?	There is extensive, detailed regulation of law practices and trust money accounts in Australia. Trust money accounts may only be opened and maintained at Authorised Deposit Taking Institutions (banks and other prudentially supervised and regulated financial institutions) who are obliged to report the opening and closing of trust accounts to the legal profession regulatory authority. The opening and closing of trust accounts must also be reported to the relevant legal profession regulatory authority by the law practice. Client consent/authorisation is required for disbursing monies from a general trust account. A law practice must appoint an independent external examiner to	This is answered above under your question 2.	Solicitors are required to deliver an accountant’s report to the Council containing the information prescribed by the Accountant’s Report Rules, Cap. 9A (“ARR”) once in each practice year under section 8 of the Legal Practitioners Ordinance, Cap. 159 (“LPO”)(“the accountant’s report”). The accountant’s report has to be prepared by a certified public accountant (practising) appointed by the firm and in the report, the accountant has to certify that the firm has complied with the SAR. Registered foreign lawyers are also required to deliver an accountant’s report but they can produce a statutory declaration in the case of a foreign lawyer who satisfies the Council that he/she did not during	Practices are required to forward a monthly certificate to the NZLS when the trust account has been written up and balanced for the month. The form of certificate covers matters such as the correctness of the trust account records and compliance with the Regulations. The NZLS distributes the prescribed form to all practices in a format that includes an identifying number for each practice. Reports must also be made to clients on at least an annual basis in relation to money and assets held on their behalf.

	examine and report annually on compliance by the law practice with its statutory responsibilities and obligations for the receipt, holding and disbursement of trust money. There is also a system of random auditing of law practice trust records. In addition, Authorised Deposit Taking Institutions and legal practitioners are under a statutory duty to report any suspected irregularities in managing trust monies and trust accounts.		any part of that year handle, hold or receive client money under rule 6(b) of the ARR.	
What authority does the regulator have over these monies	See answer 4 above.	The Law Society can conduct inspections into the client or other bank accounts of a law practice either on its own motion or based on a complaint. If there are disciplinary issues, the lawyers can face disciplinary action. If appropriate, the Law Society can intervene into the client account which means that the no monies can be withdrawn by the law practice from the account as the Law Society becomes the signatory to the account or alternatively, without the leave of the Court.	The Law Society has the power to intervene into the practice of a firm if the Council considers that a solicitor has failed to comply with the SAR under the LPO and Schedule 2 of the LPO gives the authority to the Council to vest all sums of money held by or on behalf of the solicitor or his firm in connection with his practice (in the client account and/or office account of the firm) in the Council of the Law Society of Hong Kong. The Council also has the power under SAR to require each principal of a firm to replace any missing client money from the principal's own resources even if the money has not been misappropriated by the principal himself.	The Law Society maintains an inspectorate which visits practices operating trust accounts. This was previously undertaken on a routine cyclical basis but the Inspectorate now uses a risk-based framework to determine the urgency and frequency of visits. In carrying out inspections (also known as reviews), their primary focus will be on the trust accounting procedures and controls of firms. However, Inspectors will also be checking compliance generally with the regulations and any rules, such as the Rules of Conduct and Client Care and Lawyers Nominee Company Rules. Their objective will be primarily educative, ensuring, for instance, that firms are aware of client care obligations, such as providing required information when accepting instructions. The Inspectorate is granted the power in the Regulations to require information directly from the bank holding a lawyers' trust account. the Inspectorate reports any concerns to the Law Society who may then determine whether disciplinary action is necessary.
What are the controls/security features?	See answers 2 and 4 above. In addition: any money received in cash must always be deposited into a trust account before been dealt with according to the client's directions; money can only be withdrawn from a trust account by cheque or electronic funds transfer; money deposited in a trust account	No monies above S\$5,000 in a single transaction can be withdrawn unless there are 2 signatories or unless the law firm engages an approved book-keeper. The approved book-keeper must meet certain minimum qualifications. If the law firm has an approved book-keeper, then a single signatory can sign cheques of up to	The SAR has specified requirements regarding withdrawal of client money from the client account and the Council may, under the SAR, require a solicitor to produce his books of account, bank pass books, loose-leaf bank statements, statement of account, vouchers and any other necessary documents for	The Lawyers and Conveyancers Act (Trust Account) Regulations 2008 contain obligations relating to the holding, accounting, withdrawal etc from a trust account. See also above on the powers of the Inspectorate.

	cannot be used for payment of the debts of the law practice; trust money cannot be mixed with other monies without the regulatory authority's approval; money must not be held in a trust account under a false name; a deficiency in a trust account or the failure to pay or deliver trust money attracts a substantial civil penalty. Where irregularities are found by an external examiner or trust account inspector, the relevant regulatory authority may appoint an external supervisor to manage the law practice's trust accounts and conduct a detailed investigation into the law practice. A breach of trust accounting obligations can lead to civil penalties, criminal proceedings and disciplinary proceedings.	S\$30,000 in a single transaction. Any amount beyond S\$30,000 in a single transaction will require 2 signatories even if the law firm has an approved book-keeper. No cash, bearer cheque or electronic withdrawals are allowed from the client account. The law society conducts courses for the approved book-keeper on keeping of accounts and legislation requires that the book-keeper informs the law society of any irregularities in the accounts. In respect of conveyancing monies, the lawyer is required to open a separate conveyancing account and no money can be withdrawn from it without the signature of the other party in the transaction.	inspection by the Monitoring Accountants ("MAs") appointed by the Council to ensure the firm's compliance of the SAR. The firm is also required to deliver the Accountant's report mentioned in paragraph (iv) above to the Council every calendar year. In addition, the Council has the power under section 6 of the LPO to refuse to issue a practising certificate to a solicitor if he/she fails to deliver an accountant's report.	
What are the vulnerabilities?	There is always the risk of fraud. Solicitors are required to make an annual financial contribution to a Fidelity Fund which provides a means of redress for clients and others who have suffered financial loss as a result of a defalcation over trust money.	A glib talking lawyer and/or uninformed client and/or dishonest/needy staff	Although we have laws to require a solicitor to produce their accounting documents for our inspection but the deliberate flouting by solicitors from putting resources into maintaining proper accounts is a problem. For instance, some sole-proprietor or smaller-sized firms do not employ qualified accountants or even bookkeepers (who have knowledge of the SAR) to prepare their books and accounts. Some even ask their spouse or relatives or other clerical staff who may not have sufficient knowledge of the SAR to prepare the firm's books and accounts.	In 2013-14, the NZLS Inspectorate conducted 389 reviews of trust accounts. Of these, 43 were referred to the Lawyers Complaints Service. Of these: 27 remain with the Standards Committees pending further action; 3 required no further action; 2 led to further investigations; 1 lawyer was ordered to desist from a current practice; 7 lawyers had unsatisfactory findings and orders made against them; 3 lawyers were referred to the Disciplinary Tribunal. In addition 9 law firms were investigated resulting in: 4 referrals by a Standards Committee to the Disciplinary Tribunal (all lawyers struck off and or suspended); 1 lawyer having an order made against them; 3 remain open; 1 referral to the Police.
What is the cost?	The cost of maintaining trust accounts will vary depending on the size of the law practice and the number of transactions. These, together with the costs of the annual external examination are borne by the law practice. In addition, the law practice may bear the cost of any interventions in the law	Accountant's reports and book-keeper costs are borne by the lawyers engaging them. The Law Society bears the costs of inspections/interventions/regulatory oversight	No reply	The cost of an Inspectorate visit is funded by an annual Inspectorate fee of NZ\$385 (plus GST) payable by all barristers and solicitors practising on own account operating with or without a trust account. This fee enables the inspectorate to carry out all of its functions and to visit and review lawyers. However, if further visits are required and/or other

	practice because of irregularities in managing and accounting for trust money.			remedial work needs to be undertaken, then the cost of these visits may be charged to the practice.
Who receives the benefit of the interest? How is it used?	The interest that is generated on monies held in trust accounts is deposited into public purpose funds. That money can be used for a variety of purposes including to fund the cost of regulation, for community and public education about the legal system and to meet the funding needs of Fidelity Funds.	Lawyers can keep the interest except where the amount held in each transaction is more than S\$5,000 and the lawyer knows that the money will not be utilised in the next 4 months. In such cases, the lawyer needs to account to the client for the interest unless agreed otherwise with the client. On your question 9, the Law Society is currently proposing for the threshold sum of \$5,000 to be increased (considering the very low ban interest rates here in Singapore).	The interest generated from the client account belong to the client under Practice Direction J but the said Practice Direction has been suspended by the Council since 5 January 2005 until such time as the interest rate reached 5.375 % in accordance with the Law Society Circular no. 04-4 (SG) dated 5 January 2005	S.114 of the Act states that all money held in a trust account should earn interest for the benefit of that person, unless: (a) that person instructs otherwise; or (b) it is not reasonable or practicable (whether because of the smallness of the amount, the shortness of the period for which the practitioner, related person or entity, or incorporated firm is to hold the money, or for any other reason).
Does the regulator maintain a fund to compensate clients for the theft of client monies by a lawyer?	Yes - see answer to question 7.	Yes. Every lawyer in private practice contributes S\$100 per year to the Fund. The Fund is a discretionary fund to mitigate loss suffered by any person due to dishonesty of a lawyer or his staff.		The Lawyers Fidelity Fund provides compensation to people who suffer theft of any money or property entrusted to lawyers or incorporated law firms while providing legal services or acting as solicitor-trustee. The Lawyers Fidelity Fund is held in trust by the Society and is funded by lawyers in practice on own account, with the exception of those who elect not to receive money or other valuable property in trust. The maximum amount which can be paid to an individual claimant is \$100,000 (Regulation 11, Lawyers and Conveyancers Act (Lawyers: Fidelity Fund) Regulations 2008). The Fund applies for all claims relating to theft by lawyers or law firms from 1 August 2008. The contribution for each practitioner in 2013/14 was NZ\$320.