

# Information for Clients



**BDM Lawyers Limited**

A merger of TMF Lawyers & Keesing McLeod

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

## 1. Fees

The basis on which fees will be charged is set out in our Letter of Engagement and Terms of Engagement. When payment of fees is to be made is set out in our 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 Society. We will provide you with particulars of the minimum standards upon request.

## 3. Lawyers Fidelity Fund

The Society maintains the Lawyers Fidelity Fund for the purposes 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 \$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. Compliments and complaints

We maintain a procedure for handling any compliments and complaints by clients, designed to ensure that they are dealt with promptly and fairly. If you have a compliment or complaint about our services or charges, you may talk to the person in our firm who has overall responsibility for your work.

If you do not wish to refer your compliment or complaint to that person, or you are not satisfied with that person's response to your enquiry, you may refer your compliment or complaint to director Don Battah, whom may be contacted as follows:

- By letter                      PO Box 5003, Wellington 6140
- By email                        Don.Battah@bdmlawyers.co.nz
- By telephone                +64 4 494 8362

The New Zealand Law Society also maintains a complaints service and you are able to make a complaint to that service. To do so you should contact the Society as follows:

- In person                      17 Whitmore Street, Wellington Central, Wellington
- By letter                        PO Box 5041, Wellington 6140
- By email                        inquiries@lawsociety.org.nz
- By telephone                +64 4 472 7837

## **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 our letter of engagement. We may change the people who carry out the work from time to time.

## **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 (the rules). 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.*

## **7. Limitations on extent of our Obligations or Liability**

Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our Letter of Engagement and in our Terms of Engagement.

# AML/CFT Requirements



**BDM Lawyers Limited**

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Under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT) we are required undertake client due diligence to collect and hold certain information before we are able to act for you. We are also required to identify all clients in accordance with the Amended Identity Verification Code of Practice 2013.

If we do not already hold the following information we will need to sight **the original or a certified true copy** of the following documents:

## For Individuals

Each client needs to provide

### 1. Photo ID

Either

- A current **Passport**; or
- A current **New Zealand Firearms License**; or
- A current **New Zealand Driver Licence** *and* a **Bank Statement** from a Registered New Zealand Bank showing your name and address dated within the last six (6) months.

### 2. Proof of Address

A document dated in the last six (6) months from a government agency, local authority, utility provider or bank which shows your name and current residential address. An example of acceptable documents include:

- rates demand
- utility bill
- bank statement

## For Companies

We need the information above (Photo ID and Proof of Address) for each of the directors of the company as well as for any other Controlling Persons; and

- A copy of the Shareholder's Agreement for the company (if any)

## For Trusts

We need the information above (Photo ID and Proof of Address) for each of the Trustees as well as for any other Controlling Persons *and* the following information for the Trust:

- **Trust Documents** (Trust deed, and any changes of the deed or trustees)
- **Source of Wealth** for the Trust (and **Source of Funds** for the Transaction if applicable)
- Date of Birth for each named Beneficiary of the Trust.

**If you are unsure about what documentation you need to provide or are unable to provide the documents listed above please talk to us.**

By law we are unable to act until we hold this information.

# Terms of Engagement



These Standard Terms of Engagement apply in respect of all work carried out by us for you, except to the extent that we agree otherwise in writing.

## 1. Definitions

In these terms “we” “us” or “our” means “BDM Lawyers Limited” and “you” or “your” means the person, persons or entity(ies) to whom our letter of engagement is addressed.

## 2. Services

The services which we provide for you are limited to those outlined in our engagement letter and any further written instructions that you may expressly provide and which we accept in writing. Part or all of your instructions may be delegated to other professionals in our firm.

## 3. Alteration and Acceptance

We are entitled to change these Terms from time to time. A copy of the current Terms is always available on our website. The newest published version of these Terms applies to all current and future engagements, whether or not we send you another copy of them. You do not need to sign anything to accept these Terms and any updated Terms. While we request that you do sign and return these Terms, simply continuing to instruct us or use our services indicates acceptance.

## 4. Who can give us instructions

Unless otherwise agreed in writing we are entitled to take instructions from the person, persons or entity(ies) who have signed our letter of engagement *and* if we are engaged by a couple (married or not), we may take instructions from either of the couple; if we are engaged by a partnership, we may take instructions from any partner or officer of the partnership; if we are engaged by a trust, we may take instructions from any trustee including an advisory trustee; if we are engaged by a company, we may act on instruction from any director, employee, or anyone else whom the company allows to speak on its behalf; if we are engaged by a not for profit entity we may act on instructions of any officer or employee; and if we are instructed by a body corporate we may take our instructions from the chairperson or any member of the body corporate committee.

## 5. Your obligations to us

You need to promptly give us all relevant information available to you about the services that we are to provide to you, and keep us updated should any circumstances change. We will not check the accuracy of information provided to us unless it is specifically agreed in writing that we are to do so. We are not responsible for any loss or damage as a result of delays in disclosure or non-disclosure. We cannot and do not guarantee outcomes or results.

## 6. Fees

The fees which we will charge or the manner in which they will be arrived at, are set out in our engagement letter. If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of our services. Work which falls outside that scope will be charged on an hourly rate basis. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside the agreed scope and if requested, give you an estimate of the likely amount of the further costs. Any estimate of our fee will normally be given as a range, exclusive of GST. Unless stated otherwise any estimate will not include expenses and disbursements incurred on your behalf. Any estimate provided

by us is not a quote and is intended as a guideline only. GST (if any) is payable by you on our fees and charges. We may adjust all fees to ensure they take into account all matters set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

## 7. How we charge and what we charge for

For work charged on an hourly rate basis we record time in 6 minute units. Time is only one of the factors set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 which we use to determine our fee. Work that we may record time for includes (but is not limited to) time spent: preparing for and meeting with you; telephone discussions with you and on your behalf; receiving reading, writing and replying to emails, attendances on representatives of other parties; considering the issues relevant to you; researching the law relating to your matter; reading and considering relevant information (including, letters, contracts, emails and other documents); dictation, drafting, editing and checking of documents; supervision of staff members, dealing with third parties, obtaining assistance from other providers or experts, time spent travelling, general file administration, and compliance work.

## 8. Trustee/Executor Responsibility Fee

If a director or employee acts as executor or trustee, an annual trustee responsibility fee may be charged in addition to any fee for legal services provided by us (if charging is permitted under the terms of the will or deed). The amount of the trustee responsibility fee will be invoiced in advance and will be reassessed each year and will take into account all matters set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and in particular the complexity of the estate or trust, how many beneficiaries are involved, how many classes of assets must be managed, the value of the estate or trust, and the risk we take on in accepting the appointment.

## 9. Disbursements and expenses

In providing services, we may incur disbursements which are payments to third parties on your behalf. The actual amounts paid out will be included in our account to you in addition to our fee. We may require an advance payment for disbursements or expenses which we will be incurring on your behalf.

## 10. Office Services

We charge a fee for in-house office services of \$60 which is payable on each invoice. This is a fee we charge to cover general office expenses (such as photocopying, printing, postage, and phone calls), not a disbursement paid to a third party.

## 11. Invoices

We will send interim invoices to you, usually monthly and on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense or a specified event occurs.

## 12. Payment of our invoices

Invoices are payable within seven (7) days of the date of the invoice, unless alternative arrangements have been made with us. You agree that interest is payable on any amount which is

overdue. Interest will be calculated at the rate of 1% per month on the full outstanding balance. Interest is payable until all fees disbursements expenses and other charges are paid in full including after judgment. If you have difficulty in paying any of our accounts, please contact us so that we can discuss payment arrangements.

### **13. Your liability to us**

Where our client comprises more than one legal person or entity, the individual legal entities are jointly and severally liable for our fees and all other sums payable and obligations under these Terms. We do not have any obligation to pursue any or all of those entities and may pursue enforcement against any one or more of them at our sole discretion.

### **14. Deductions**

You irrevocably authorise us to without further notice to you deduct our fees and other expenses from any funds held in our trust account on your behalf on provision of an invoice to you, unless those funds are held for a specified purpose.

### **15. Retainer and Security**

We may ask you to pre-pay amounts to us as a retainer, and to provide security for our fees and expenses and disbursements. You irrevocably authorise us to deduct fees and expenses and disbursements for which we have provided an invoice from any retainer amount held and/or from any funds held on your behalf in trust account (including funds held on other matters for which we act for you).

### **16. 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 remain responsible for payment to us if the third party fails to pay us.

### **17. Collection Costs**

If you do not pay our invoices, we will be entitled to stop working for you and to take legal action against you for payment of the invoice and all associated costs of collection including actual legal costs and disbursements. Should we elect to undertake such legal action ourselves you are still required to pay our actual legal costs as if we had instructed another solicitor.

### **18. Confidentiality**

We will subject to these terms of engagement hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. We will not disclose any of this information to any other person except to the extent necessary or desirable to enable us to carry out your instructions; or to the extent required by law or by the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008; or unless you authorise us to do so.

Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services for you. We will not disclose to you confidential information which we have in relation to any other client.

### **19. Privacy**

We may use any information we hold concerning you or your affairs for verifying your identity; management and resolution of any complaint in which you are involved; carrying out credit reference or credit management; direct marketing to you; and other business purposes to assist us in providing our services to you. We also have the right without further notification to you to make and keep an audio recording of any and all telephone discussion we have with you or on your behalf. We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 2020 or any other law. We may charge you our reasonable costs for compiling such documentation on an hourly rate and per copy basis.

### **20. Regulatory and Compliance disclosures**

In certain situations, we may be required by law to provide New Zealand or overseas authorities (including New Zealand or overseas tax or revenue authorities) with details of, or information about, funds that we are holding on your behalf. You hereby authorise us to collect, hold, use, and disclose information as required for us to fulfil our regulatory obligations for conveyancing, anti-money laundering and countering funding of terrorism (AML\CFT), Prescribed Transaction Reporting (PTR), Foreign Account Tax Compliance Act (FATCA), Automatic Exchange of Information (AEOI) and Common Reporting Standard (CRS), or other regulatory purposes.

### **21. Verification of Personal Information**

We have obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and the Financial Transactions Reporting Act 1996 to collect from you and retain information required to verify your identity and in some circumstances your source of wealth and your source of funds. We are unable to act for you until we hold and have verified this information. We may therefore require you to show us evidence verifying your identity (such as a passport or driver's licence) and your source of wealth and your source of funds. We are required to retain copies of these documents. We may also perform such other customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which our services relate as we consider to be required by law. We have further responsibilities under this legislation to report certain transactions and suspicious activity to the New Zealand Police. We are generally not permitted to notify the client that such a report has been made. Reportable transactions include (but are not limited to) International money transfers with a value of over NZD \$1,000 and cash transactions with a value of over NZD \$10,000. For each reportable transaction that we process we may charge a fee of up to \$35 to recover the administration cost of reporting.

### **22. End of Engagement and Termination**

Our engagement on a matter will end once the instructions have been completed. We will only advise you on further issues arising in connection with the matter (such as renewal dates, lapse of registration, changes in law, or post-transaction notifications) if it was specifically set out in our letter of engagement. You may terminate our retainer at any time. We may terminate our retainer in any of the circumstances set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. If our retainer is terminated you are still responsible to pay us all fees due up to the date of termination and all expenses incurred up to that date. You are also required to pay all fees, disbursements and expenses reasonably incurred by us in terminating our involvement.

### **23. Retention of Files and Documents**

We keep a record of all important documents which we receive or create on your behalf. At any time, we may dispose of documents which are duplicates, or which are trivial. It is our current policy to retain hard copy documents for at least three (3) years after our engagement ends. We will hold electronic copies of those documents for at least seven (7) years after our engagement ends. We charge a fee of \$40 per matter for File Storage and Archiving to cover the costs of scanning and physical and digital storage. You irrevocably authorise us (without further reference to you) to destroy or delete all files and documents (other than any documents that we hold in safe custody for you) seven (7) years after our engagement ends. Where we hold documents in safe custody for you (in our Deeds system) we may charge a fee of \$10 per document to cover the scanning and long term storage of those documents.

### **24. Conflicts of Interest**

We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

#### **25. Duty of Care**

Our duty of care is to you and not to any other person. We accept no liability to any other person, unless we expressly agree in writing. Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by you or by third parties. Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any ongoing duty or liability unless you specifically engage us to do so on an ongoing basis.

#### **26. Copyright and use of advice**

We own copyright in all documents or work we create in the course of performing services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written consent. Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our prior written consent.

#### **27. Guarantee**

If our client is a company, trust, or multi person entity then the directors, trustees, or officers of that organisation who sign our Letter of Engagement by doing so in addition to binding the entity also personally guarantee all obligations that the entity may from time to time have to us on the following terms:

- (a) The guarantors hereby unconditionally and irrevocably guarantee the due, proper and punctual payment by the client of all sums which are now owing or may from time to time become owing to us by the client whether or not the liability of the client is or has become void or unenforceable for any reason and whether or not the foregoing provisions of these terms are void or unenforceable against the guarantor for any reason; and
- (b) The guarantor agrees to be bound as principal debtor and no granting of time or credit or extension of former credit by us, nor any neglect to sue will in any way abrogate, diminish or release the guarantor from their obligations; and
- (c) This guarantee will remain in full force and effect until we grant a written release to the guarantors upon the whole of the moneys hereby secured and all of the obligations hereby secured having been paid, satisfied or performed, and will not be discharged by the receivership, liquidation, bankruptcy or death of the client or the guarantor.

#### **28. Trust Account**

We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoice). A full record of our trust account is kept at all times. A statement of trust account transactions detailing funds received and payments made on your behalf will be provided to you periodically and at any time upon your request. If we are holding significant funds on your behalf, we will normally lodge those funds on interest-bearing

deposit with a bank. In that case, we will charge a commission of 10% of the interest derived. We also require you to complete a Foreign Tax Residency Form. If you do not complete the Foreign Tax Residency Form we are unable to lodge funds on interest-bearing deposit for you. We may charge a fee of \$25 per matter to lodge funds on interest bearing deposit to cover the costs of collecting storing and reporting the Foreign Tax Residency information.

#### **29. Small Trust Account Balances**

You acknowledge that that, unless directed otherwise, we have a duty to pay to you any balance of money in our trust account held following any engagement; but in respect of any small balances remaining in our trust account following any engagement that are uneconomic to pay to you, you irrevocably direct and authorise us to pay the balance held as a donation to a charity (namely the Cancer Society of New Zealand (Wellington Division) Incorporated) the amount in our trust account and in respect of that donation you waive any right to receive reporting over and above contacting you at the last known email address we have for you. You also consent to us batching and remitting several small balances in a single donation.

#### **30. New Zealand Law**

Our relationship with you is governed by New Zealand law and New Zealand Courts have exclusive jurisdiction.

#### **31. Limitations on our Obligations**

Our obligations to you are restricted to the matters set out in the Services to be provided section of our Letter of Engagement. Unless specifically included in the Services to be provided section of our Letter of Engagement our liability is also limited as set out below:

- (a) our advice is limited to legal matters under New Zealand Law; and
- (b) we do not provide advice on tax matters. We recommend that separate tax advice be obtained from a specialist (where appropriate); and
- (c) We do not provide financial advice and we recommend you seek financial advice from an appropriately qualified financial adviser (where appropriate); and
- (d) we do not give advice about the contents of specialist reports which you may have obtained or instructed us to obtain on your behalf (such as building reports, LIM reports, Disclosure Information, and Engineer's reports) as we are not qualified to do so; and
- (e) Our role is limited to outlining the legal effects of any arrangement or transaction, so you can make an informed decision about the arrangement or transaction. We cannot make decisions for you and are not responsible decisions you make.

#### **32. Limitations on Liability**

To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with professional services is limited to the amount available to be payable under the Professional Indemnity Insurance held by the firm. For all other obligations our liability to you is limited to the amount of our fees for that engagement which have been invoiced and paid in full and on time by you.