AMENDMENT TO RULE 22 OF THE ADVOCATES ACCOUNTS RULES 2008 OF THE ISLE OF MAN LAW SOCIETY

At an annual general meeting of the members of the Isle of Man Law Society held at the Best Western Palace Hotel and Casino, Central Promenade, Douglas, Isle of Man on the 13th January 2017 it was resolved that Rule 22 of the Advocates Accounts Rules 2008 of the Isle of Man Law Society be repealed and amended in accordance with the amendment below, subject to the approval of the Advocates Acts Committee pursuant to section 4(5) of the Advocates Act 1976.

Amendment

Rule 22 of Advocates Accounts Rules 2008 be repealed and replaced with the following:

"**Rule 22 – Withdrawals from a client account**

(1) *Client money* may only be withdrawn from a *client account* when it is:

(a) properly required for a payment to or on behalf of the *client* (or other person on whose behalf the money is being held);

(b) properly required for payment of a *disbursement* on behalf of the *client*;

(c) properly required in full or partial reimbursement of money spent by the advocate on behalf of the *client*;

(d) transferred to another *client account*;

(e) withdrawn on *client's* instructions, provided the instructions are for the *client's* convenience and are given in writing, or are given by other means and confirmed by an advocate to the *client* in writing;

(f) a refund to an advocate of an advance no longer required to fund a payment on behalf of a *client* (see rule 15(2)(b));

(g) money which has been paid into the account in breach of the rules (for example, money paid into the wrong *separate designated client account)* – see paragraph (4) below;

(h) withdrawn following the arrival of the anticipated telegraphic transfer where previously money has been paid into the account in accordance with Note (viii)(b);

(i) money not covered by (a) to (h) above, where an advocate complies with the conditions set out in rule 22(2A); or

(j) money not covered by (a) to (h) above, withdrawn from the account on the written authorisation of Council or any committee of Council for the time being empowered by Council to grant such authorisations (herein the "authorising body"). The authorising body may impose conditions which may include a condition that an advocate pays the money to a charity registered in the Isle of Man which gives an indemnity against any legitimate claim subsequently made for the sum received.

(2) *Controlled trust money* may only be withdrawn from a *client account* when it is:

(a) properly required for a payment in the execution of the particular *trust*, including the purchase of an investment (other than money) in accordance with the *trustee's* powers;

(b) properly required for a payment of a *disbursement* for the particular *trust*;

(c) properly required in full or partial reimbursement of money spent by the *advocate* on behalf of the particular *trust*;

(d) transferred to another *client account*;

(e) transferred to an account other than a *client account* (such as a *building society* share account or an account outside the Isle of Man), but only if the *trustee's* powers permit, or to be properly retained in cash in the performance of the *trustee's* duties;

(f) a refund to an advocate of an advance no longer required to fund a payment on behalf of a *controlled trust* (see rule 15(2)(b));

(g) money which has been paid into the account in breach of the rules (for example, money paid into the wrong *separate designated client account*) – see paragraph (4) below;

(h) withdrawn following the arrival of the anticipated telegraphic transfer where previously money has been paid into the account in accordance with Note (viii)(b); or

(i) money not covered by (a) to (h) above, where an advocate complies with the conditions set out in rule 22(2A); or

(j) money not covered by (a) to (h) above, withdrawn from the account on the written authorisation of the authorising body. The authorising body may impose conditions which may include a condition that an advocate pays the money to a charity registered in the Isle of Man which gives an indemnity against any legitimate claim subsequently made for the sum received.

(2A) A withdrawal of *client money* under rule 22(1)(i) or rule 22(2)(i) above may be made only where the amount held does not exceed £500 in relation to any one individual *client* matter and an advocate:

(a) establishes the identity of the owner of the money, or makes reasonable attempts to do so;

(b) makes reasonable attempts to ascertain the proper destination of the money, and to return it to the rightful owner, unless the reasonable costs of doing so are likely to be excessive in relation to the amount held;

(c) pays the funds to a charity registered in the Isle of Man;

(d) records the steps taken in accordance with rule 22(2A)(a)-(c) above and retains those records, together with all relevant documentation (including receipts from the charity), in accordance with rule 32.

(3) *Office money* may only be withdrawn from a *client account* when it is:

(a) money properly paid into the account to open or maintain it under rule 15(2)(a);

(b) properly required for payment of an advocate's *costs* under rule 19(2) and (3);

(c) the whole or part of a payment into a *client account* under rule 19(1)(c);

(d) part of a mixed payment placed in a *client account* under rule 20(2)(b); or

(e) money which has been paid into a *client account* in breach of the rules (for example, interest wrongly credited to a *general client account*) – see paragraph (4) below.

(4) Money which has been paid into a *client account* in breach of the rules must be withdrawn from the *client account* promptly upon discovery.

(5) Money withdrawn in relation to a particular *client* or *controlled trust* from a *general client account* must not exceed the money held on behalf of that *client* or *controlled trust* in all the advocate's *general client accounts* (except as provided in paragraph (6) below).

(6) An advocate may make a payment in respect of a particular *client* or *controlled trust* out of a *general client account*, even if no money (or insufficient money) is held for that *client* or *controlled trust* in the *advocate's general client account(s)*, provided:

(a) sufficient money is held for that client or controlled trust in a separate designated client account; and

(b) the appropriate transfer from the separate designated client account to a general client account is made immediately.

(7) Money held for a client or controlled trust in a separate designated client account must not be used for payments for another client or controlled trust.

(8) A client account must not be overdrawn, except in the following circumstances:

(a) A *separate designated client account* for a *controlled trust* can be overdrawn if the *controlled trustee* makes payments on behalf of the *trust* (for example, inheritance tax) before realising sufficient assets to cover the payments.

(b) If a sole practitioner dies and his or her *client accounts* are frozen, the advocate-manager can operate *client accounts* which are overdrawn to the extent of the money held in the frozen accounts.

Notes

<u>Withdrawals in favour of advocates, and for payment of disbursement</u>

(i) Disbursements to be paid direct from a client account, or already paid out of the advocate's own money, can be withdrawn under rule 22(1)(b) or (c) (or rule 22(2)(b) or (c)) in advance of preparing a bill of costs. Money to be withdrawn from a client account for the payment of costs (fees and disbursements) under rule 19(2) and (3) become office money and is dealt with under rule 22(3)(b).

(ii) Money is "spent" under rule 22(1)(c) (or rule 22(2)(c)) at the time when the advocate despatches a cheque, unless the cheque is to be held to the advocate's order. Money is also regarded as "spent" by the use of a credit account, so that, for example, search fees, taxi fares and courier charges incurred in this way may be transferred to the advocate's office account.

(iii) See rule 23(3) for the way in which a withdrawal from a client account in favour of the advocate must be effected.

<u>Cheques payable to banks, building societies, etc.</u>

(iv) In order to protect clients' funds (or controlled trust funds) against misappropriation when cheques are made payable to banks, building societies or other large institutions, it is strongly recommended that advocates add the name and number of the account after the payee's name.

<u>Drawing against uncleared cheques</u>

(v) An advocate should use discretion in drawing against a cheque received from or on behalf of a client before it has been cleared. If the cheque is not met, other client's money will have been used to make the payment in breach of the rules. See rule 7 (duty to remedy breaches). An advocate may be able to avoid a breach of the rules by instructing the bank or building society to charge all unpaid credits to the advocate's office or personal account.

(vi) Drawing against a cheque received from or on behalf of a client before it is cleared is not a breach of the rules provided:

(a) the cheque does clear within a reasonable period of time; or

(b) the unpaid credit is not charged to a client account.

<u>Non-receipt of telegraphic transfer</u>

(vii) If an advocate acting for a client withdraws money from a general account on the strength of information that a telegraphic transfer is on its way, but the telegraphic transfer does not arrive, the advocate will have used other client's money in breach of the rules. See also rule 7 (duty to remedy breaches).

(viii) Withdrawing money from a general account on the strength of information that a telegraphic transfer is on its way is not a breach of the rules provided:

(a) the telegraphic transfer does arrive within a reasonable period of time; or

(b) the advocate's own money equal to the value to the money withdrawn is paid into the general account.

<u>Withdrawals on instruction</u>

(ix) One of the reasons why a client might authorise a withdrawal under rule 22(1)(e) might be to have the money transferred to a type of account other than a client account. If so, the requirements of rule 16 must be complied with.

<u>Withdrawals where rightful owner cannot be traced</u>

(xi) Withdrawals where the rightful owner cannot be traced, on the authorising body's authorisation and without the authorising body's authorisation

(a) Applications for authorisation under rule 22(1)(j) or rule 22(2)(j) should be made to the Chief Executive of the Isle of Man Law Society, who can advise on the criteria which must normally be met for authorisation to be given. You may under rule 22(1)(i) or rule 22(2)(i) pay to a charity registered in the Isle of Man sums of £500 or less per client without the authorising body's authorisation, provided the safeguards set out in rule 22(2A) are followed.

(b) You will need to apply to the authorising body, whatever the amount involved, if the money to be withdrawn is not to be paid to a charity registered in the Isle of Man. This situation might arise, for example, if you have been unable to deliver a bill of costs because the client has become untraceable and so cannot make a transfer from client account to office account in accordance with rule 19(2) and 19(3).

(c) After a practice has been wound up, surplus balances are sometimes discovered in an old client account. This money remains subject to rule 22 and rule 23. An application can be made to the authorising body under rule 22(1)(j) or rule 22(2)(j) as the case may be."

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President

This amendment to the Practice rule was approved by the Advocates Acts Committee and came into effect on 7 FEBRUARY 2017.

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