

Information for Clients and Terms of Engagement

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Information for Clients

We have set out below the information which the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society (**Law Society**) require us to provide to clients.

This information should be read together with our Standard Terms of Engagement (**Terms**). If you have any questions about this information or our Terms, please let us know.

1. **Fees:** Our Terms set out the basis on which fees will be charged, when payment of fees is to be made and terms relating to the deduction of fees from funds held in our trust account on your behalf.
2. **Professional Indemnity Insurance:** We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society.
3. **Lawyers' Fidelity Fund:** The Lawyers' Fidelity Fund (**Fund**) established by the Law Society provides compensation to people who suffer theft of any money or property entrusted to a lawyer. The maximum amount payable by the Fund to an individual claimant is NZ\$100,000. The Fund will not usually compensate anyone for money lost which a lawyer has been instructed to invest.
4. **Complaints**
 - 4.1 If you have a complaint about us or our services, please refer your complaint to Stuart Weir or Mike Kemps who may be contacted by:
 - (a) telephoning (09) 525 7711; or
 - (b) emailing stuart@kempsweir.co.nz or mike@kempsweir.co.nz.
 - 4.2 You can also make a complaint to the complaints service operated by the Law Society. To do so, email complaints@lawsociety.org.nz or telephone 0800 261 801.
5. **Overall Responsibility:** Stuart Weir and Mike Kemps will have overall responsibility for the services we provide you.
6. **Limitations on Our Liability:** Our Terms limit our liability to you (e.g. refer to clause 2 of our Terms).
7. **Client Care and Service**
 - 7.1 Whatever legal services your lawyer is providing, he or she must:

- (a) act competently, in a timely way, and in accordance with instructions received and arrangements made;
- (b) protect and promote your interests and act for you free from compromising influences or loyalties;
- (c) discuss with you your objectives and how they should best be achieved;
- (d) provide you with information about the work to be done, who will do it and the way the services will be provided;
- (e) charge you a fee that is fair and reasonable and let you know how and when you will be billed;
- (f) give you clear information and advice;
- (g) protect your privacy and ensure appropriate confidentiality;
- (h) treat you fairly, respectfully, and without discrimination;
- (i) keep you informed about the work being done and advise you when it is completed; and
- (j) let you know how to make a complaint and deal with any complaint promptly and fairly.

7.2 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.

7.3 If you have any questions, please visit www.lawsociety.org.nz or call 0800 261 801.

Standard Terms of Engagement

Unless we expressly agree otherwise in writing, these Standard Terms of Engagement (**Terms**) will apply whenever we provide legal or other related services to our clients (**you**). You do not need to sign anything or otherwise confirm your acceptance of these Terms - your acceptance will be assumed from you engaging us or continuing to engage us.

We are entitled to change these Terms from time to time, in which case we will provide you a copy of the amended Terms.

1. Scope of Our Role and Services

1.1 Our duties are owed to you. Unless required by law, those duties will not extend to others (e.g. associated parties such as shareholders or related companies, directors or employees, or parents or other family members).

1.2 Our advice is given solely for your benefit and in your interests. No other parties can rely on the advice we give you.

1.3 Our advice is strictly limited to the matters stated in it and does not apply by implication to any other matters.

1.4 We are not experts in accounting or tax matters. We recommend that you also obtain advice in that regard from suitably experienced and qualified advisers in respect to any matter or transaction that we handle for you.

1.5 We do not give investment or financial advice of any kind.

1.6 We are only qualified to advise on New Zealand law.

1.7 We will not remind you about dates (e.g. financing statements expiry dates, condition dates, lease renewal or rent review dates, consent expiry dates or registered trade mark expiry dates) or update advice after it is given.

2. Limitations on Our Liability

2.1 To the extent permitted by law, in relation to any claim against us (which, for the purpose of this clause 2, includes our directors, employees and agents) arising out of your engagement of us on a matter (or series of related matters) whether in contract, equity, tort (including negligence), an enactment or otherwise (**Claim**), our aggregate liability is limited to:

- (a) if any amount is available to be paid out in respect of your Claim under any relevant insurance policy held by us, that amount, up to a maximum of \$4,000,000; or

(b) in any other case, the lesser of:

- (i) NZ\$250,000; and
- (ii) the amount equal to five times the fees paid by you to us in relation to the matter (or series of related matters) giving rise to your Claim,

and, if you consist of more than one person (such as a couple or a partnership), this limit on our liability is the maximum combined amount that we will have to pay you together.

2.2 If we:

- (a) assist you in relation to any accounting or tax matter;
- (b) assist you on matters governed by foreign law (whether or not we have obtained foreign legal advice on your behalf); or
- (c) recommend that you engage a third party to provide you with goods or services,

we do so on the basis that we do not accept any liability whether in contract, equity, tort (including negligence), an enactment or otherwise in relation to that assistance or recommendation.

2.3 For the purposes of section 43 of the Consumer Guarantees Act 1993 (**CGA**) and section 5D of the Fair Trading Act 1986 (**FTA**), if our services are being supplied and acquired in trade, the provisions of the CGA and sections 9, 12A, 13 and 14(1) of the FTA are contracted out of and do not apply.

2.4 The Limitation Act 2010 (**Limitation Act**) is modified to the effect that any Claim must be filed within 24 months of the date of the act or omission on which the Claim is based (**Limitation Period**). The Limitation Period applies even if you do not have knowledge of the act or omission, and/or any other related facts, until after the expiry of the Limitation Period and no "late knowledge" extension (e.g. under section 11(2), 11(3), 14 or 32(2) of the Limitation Act) shall apply.

3. Financial

3.1 **Fees:**

- (a) If our initial 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.

- (b) The time spent on a matter is one factor that we take into consideration when determining a fair and reasonable fee. We may also take into consideration:
- (i) the skill, specialised knowledge and responsibility required to perform the services properly;
 - (ii) the importance of the matter to you and the results achieved;
 - (iii) the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
 - (iv) the degree of risk assumed by us in undertaking the services, including the amount or value of any property involved;
 - (v) the complexity of the matter and the difficulty or novelty of the questions involved;
 - (vi) the experience, reputation and ability of the lawyer;
 - (vii) the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
 - (viii) whether the fee is fixed or conditional (whether in litigation or otherwise);
 - (ix) any quote or estimate of fees given by us;
 - (x) any fee agreement (including a conditional fee agreement) entered into by us;
 - (xi) the reasonable costs of running our law firm; and
 - (xii) the fee customarily charged in the market and locality for similar legal services.
- (c) The hourly rates of our professional staff are set out below. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in 6 minute units,

with time rounded up to the next unit of 6 minutes.

Stuart Weir:	\$400.00
Mike Kemps:	\$400.00
Peter Kemps:	\$400.00
Tim Oliver:	\$375.00
Kate Sizer:	\$300.00
Siobhan O'Sullivan:	\$285.00
Jacqueline Hardey:	\$285.00
Emily Kempfers:	\$285.00

These hourly rates exclude GST.

- 3.2 **Disbursements and Expenses:** In providing services we may incur disbursements or expenses or have to make payments to third parties on your behalf. These will be included in our invoice to you when the disbursement or expense is incurred. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf.
- 3.3 **Agency Fees:** We may charge you an agency fee, as an additional amount, for office expenses such as Land Information New Zealand searches and registrations. This agency fee is paid to a business in which our directors have an interest.
- 3.4 **GST:** GST (if any) is payable by you on our fees and charges.
- 3.5 **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 disbursement or expense.
- 3.6 **Payment:** Our invoices are payable within 7 days of the date of the invoice, unless alternative arrangements have been made with us. We may require interest to be paid on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 5% above our main trading bank's 90-day bank bill buy rate as at the close of business on the date payment became due.
- 3.7 **Deduction from Funds Held:** If we hold funds for you then we may deduct our fees, disbursements and expenses from those funds. These Terms constitute advance notice of our intention to deduct those fees, disbursements and expenses. An invoice will be provided to you before that deduction occurs.
- 3.8 **Security / Prepayment of Fees:** We may ask you to pre-pay amounts to us, or to provide security for our fees, disbursements and expenses. If our client is a company, trust or other legal entity or personality we may require the individual(s) or other entities associated

with our client to guarantee the obligations of our client to us. You authorise us to debit against amounts pre-paid by you any fees, disbursements or expenses for which we have provided an invoice.

- 3.9 **Third Parties:** Although you may expect to be reimbursed by a third party for our fees, disbursements and expenses, and although our invoices may be directed to a third party, nevertheless you remain responsible for payment to us and we may require you to pay any such invoice.

4. Lien

- 4.1 Where work has been done by us but we have not been paid by you, then as a general rule, we have the right to retain your files and documents until all outstanding fees, disbursements and expenses have been paid.

5. Confidentiality

- 5.1 We will 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:

- (a) necessary or desirable to enable us to carry out your instructions;
- (b) required by law or by the Rules of Conduct and Client Care for Lawyers; or
- (c) otherwise permitted by these Terms or authorised by you.

6. Retention of Files and Documents

- 6.1 We will retain the files and documents related to your matters electronically for at least seven years after the end of our involvement in the matter (any hard copies may be securely destroyed). We are under no obligation to retain your files and documents for a longer period unless we explicitly agree with you in writing that we will do so. If we retain any hard copy of a file or document, it may be stored at our premises or with an independent storage provider at another location.
- 6.2 If you uplift your files or documents, they will be provided in electronic format (hard copies will also be provided if we hold them) and we will retain electronic copies. We may charge for any attendances relating to the uplift of files and documents by you.

7. Conflicts of Interest

- 7.1 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 Rules of Conduct and Client Care for Lawyers.

8. Trust Account

- 8.1 We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices). We will charge an administration fee of 5% of any interest derived from funds on interest bearing deposit in our trust account. If we are required by law to make a deduction from funds held on your behalf (e.g. a withholding tax payment) you authorise us to make such payment.

9. AML/CFT Act and FATCA

- 9.1 We must comply with all laws binding on us in all applicable jurisdictions, including (but not limited to):

- (a) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**); and
- (b) the United States Foreign Account Tax Compliance Act, the intergovernmental agreement between the United States and New Zealand relating to it, and relevant provisions of the Tax Administration Act 1994 (together referred to as **FATCA**).

- 9.2 Where required by the AML/CFT Act, FATCA or any other law binding on us (in any applicable jurisdiction):

- (a) we will perform client due diligence and account monitoring, keep records, and report any unusual or suspicious transactions; and
- (b) we may be required to assist any bank or other entity with whom we transact as your agent, or with whom we deposit money on trust for you, to comply with that entity's legal obligations in any jurisdiction,

and we may require you to promptly provide information and documents for these purposes from time to time. These may relate to you, any other relevant person (e.g. any beneficial owner), the source of funds, the transaction, the ownership structure, tax identification details and any other relevant matter. We may retain the information and documents, provide them to a bank or other entity (where applicable) to deal with in accordance with their terms, and disclose them to any law enforcement or regulatory agency or court as required by law.

9.3 We may appoint an agent under section 34 of the AML/CFT Act to complete client due diligence on our behalf, in which case, you:

- (a) authorise us to provide information concerning you and your affairs to the agent for that purpose; and
- (b) agree to pay the cost of that agent completing client due diligence (which we will invoice you as a disbursement) whether or not the particular matter or transaction proceeds.

9.4 We, the bank or other entity (as the case may be) may:

- (a) suspend, terminate, or refuse to enter into a business relationship;
- (b) delay, block or refuse to process a transaction (including by refusing to handle and deposit money on trust for you); and
- (c) report a transaction,

without notice if:

- (i) the required information or documents are not promptly provided; or
- (ii) it is suspected that the business relationship or transaction is unusual, may breach any applicable law or may otherwise relate to conduct that is illegal or unlawful in any jurisdiction.

9.5 Under the AML/CFT Act we are required to be audited every two years. You authorise us to disclose information concerning you and your affairs to the auditor for that purpose.

10. Residential Land Withholding Tax

10.1 We may be required to withhold residential land withholding tax (**RLWT**) from the sale proceeds of a property sold by you. RLWT may apply if the property sold is "residential land" and you are an "offshore RLWT person". The terms "residential land" and "offshore RLWT person" are defined in section YA 1 of the Income Tax Act 2007.

10.2 You must advise us promptly if you believe RLWT will or may be required to be withheld on sale proceeds and provide us with all information required by us (including advice from your tax advisor) to determine whether you are liable for RLWT and, if so, for how much. If you do not promptly provide this

information, we may assume that RLWT applies and withhold it.

10.3 We have no liability to you for, or in relation to, any amount we withhold and pay to the Inland Revenue Department as RLWT.

11. Electronic Communications

11.1 We may communicate with you and others by electronic means. Such communications may not be secure and may be subject to unauthorised interception, interference, error or virus. We will not be liable for any damage, expense or loss incurred as a result.

12. Termination

12.1 You may terminate our services at any time. We may terminate our services in any of the circumstances set out in the Rules of Conduct and Client Care for Lawyers.

12.2 If our services are terminated (by you or us), you must pay us all fees, disbursements and expenses incurred up to the date of termination.

13. Miscellaneous

13.1 These Terms apply to any current engagement and to any future engagement, whether or not we send you another copy of them.

13.2 You may not transfer or assign your rights or obligations under these Terms or in relation to any engagement of us on any matter.

13.3 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

13.4 "Kemps Weir" and "Kemps Weir Lawyers" are trading names of Kemp's Weir Lawyers Limited.