

# **Information Sheet – 01/2014**

## **Solicitors Accounts Regulations ROI**

### **Matters arising from the Solicitors Accounts (Amendment) Regulations 2013**

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**Consultative Committee of Accountancy Bodies in Ireland**

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## The Consultative Committee of Accountancy Bodies-Ireland

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The Institute of Certified Public Accountants in Ireland

### INFORMATION SHEET 01/2014

## Solicitors Accounts Regulations ROI - Matters arising from the Solicitors Accounts (Amendment) Regulations 2013

### 1. Introduction

Following the enactment of the Personal Insolvency Act 2012, solicitors are now eligible to act as personal insolvency practitioners (PIPs). The Insolvency Service of Ireland made the Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013 ('PIP Regulations 2013'), in July 2013, which apply to all personal insolvency practitioners, including solicitors who act as PIPs. As a result, a solicitor who acts as a PIP will have to comply with the PIP Regulations 2013 <sup>1</sup> in addition to the extant Solicitors Accounts Regulations.

**The Solicitors Accounts Regulations have been amended, by the *Solicitors Accounts (Amendment) Regulations 2013 (S.I. No. 494 of 2013)*, to clarify that moneys received by a solicitor whilst acting as personal insolvency practitioner are regulated under the Solicitors Accounts Regulations.** S.I. No. 494 of 2013 was signed into law in December 2013 and is effective from 1 January 2014.

In reviewing the provisions of S.I. No. 494 of 2013, certain practical issues and wording anomalies were identified, which have been highlighted to the Law Society of Ireland. We understand that the Law Society is currently drafting regulations to address these issues. The *key* issues identified are:

- Difficulties relating to the required reporting accountants report due to the absence of provisions applying the amendments to accounting periods beginning on/after a specified date;
- Lack of clarity regarding the requirements for balancing statements and accounting records;

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<sup>1</sup> Including engaging, where requested by the Insolvency Service of Ireland in accordance with Regulation 10(2) of the PIP Regulations 2013, an independent accountant or auditor to prepare a report confirming (a) the accuracy of the financial statements prepared by the personal insolvency practitioner and (b) the compliance by the personal insolvency practitioner with Regulations 3 to 7 of the PIP Regulations 2013.

- Lack of clarity regarding debit balances on controlled trust and insolvency arrangement ledger accounts.

Reporting accountants should note that, under the Solicitors Accounts Regulations 2001 to 2006, solicitors had discretion to lodge trust moneys firstly into client account and then to transfer them to trust accounts. Under the PIP Regulations 2013 no such discretion exists and a **personal insolvency practitioner, including a solicitor, must pay all insolvency arrangement moneys received directly to the appropriate insolvency arrangement account. Accordingly, the Solicitors Accounts Regulations have been amended and it is a breach of the regulations to lodge insolvency arrangement moneys to an account other than an insolvency arrangement account.**

The amended Solicitors Accounts Regulations define:

*“insolvency arrangement”* as a debt settlement arrangement or a personal insolvency arrangement;

*“insolvency arrangement account”* as an account (whether a current bank account or a deposit bank account) opened and kept by a PIP at a bank, which account is used solely for the purposes of receiving payments from a debtor and transmitting such payments to creditors (after the deduction of any fees, costs and outlays payable to the PIP as permitted);

*“insolvency arrangement moneys”* as moneys received, held or controlled by a personal insolvency practitioner which are subject to an insolvency arrangement in respect of which he is acting as the personal insolvency practitioner.

S.I. No. 494 of 2013 includes a revised Accountant’s Report, which now includes reporting on insolvency arrangement moneys in addition to clients’ moneys and controlled trust moneys.

## **2. Transition period / Accountant’s Report**

S.I. No. 494 of 2013 states that the amendments to the Solicitors Accounts Regulations “shall come into operation on the 1<sup>st</sup> day of January 2014”. There are no provisions applying the amendments contained in the S.I. to accounting periods beginning on/after a specified date. This gives rise to a number of specific difficulties in reporting on compliance with the regulations for accounting periods which end both on/before 31 December 2013 and for those that end after 31 December 2013.

In the revised accountant’s report the reporting accountant’s opinion includes the opinion as to whether:

*“during the above-mentioned Accounting Period, the provisions of Part II and Part III(A) and Part III(B) and Part III(C) of the **Solicitors Accounts Regulations, 2001 to 2013 have been complied with** by the above-named Solicitor(s)...”* (emphasis added)

While the above wording is enshrined in the amended Regulations, the opinion ignores the fact that the amended regulations per S.I. No. 494 of 2013 did not apply to the period up to 31 December 2013.

## *2.1 Accounting periods ending on/before 31 December 2013*

By virtue of the commencement provisions, any accountant's report signed on/after 1 January 2014 should be prepared using the revised format per S.I. No. 494 of 2013. The difficulty is that, for accounting periods ending on/before 31 December 2013, the amended regulations (the compliance with which is the subject matter of the revised accountants report) per S.I. No. 494 of 2013 will not have applied during any part of the period in question.

The Law Society has confirmed the following in this regard:

“For December 2013 year ends, the regulations were not in existence for the period in question (1 January 2013 to 31 December 2013) so the accountant will not have to report on compliance with the new regulations. The Law Society is still accepting reports in the old format for years ended 31 December 2013.”

Given that the Law Society has confirmed that it will accept either report format for accountant's reports pertaining to accounting periods ending on/before 31 December 2013, reporting accountants may find it more appropriate to use the old Accountant's Report format per the Solicitors Accounts Regulations 2001 to 2006 in such circumstances.

Reporting accountants may consider adding a comment to Appendix 2 of the report (old or revised report format) to reflect the above confirmation of the Law Society regarding compliance with S.I. No. 494 of 2013, such as:

“As noted on [page 2] of this report, the accounting period of [client's name] covered by this report ended on [31 December 2013]. As a consequence, [client's name] was not subject to the Solicitors Accounts (Amendment) Regulations 2013 – S.I. No. 494 of 2013 – during the period subject to the report. CCABI issued Information Sheet 01/2014 in June 2014 stating that the Law Society of Ireland has confirmed that compliance with the requirements of S.I. No. 494 of 2013 is only expected for the period from 1 January 2014 onwards, and the opinion of the reporting accountant is to be interpreted accordingly.

We have prepared our report and provided our opinion having regard to this confirmation from the Law Society of Ireland.”<sup>2</sup>

Reporting accountants who decide to use the old report format, as per the Solicitors Accounts Regulations 2001 to 2006, for accountant's reports pertaining to accounting periods ending on/before 31 December 2013, may also consider adding a comment to Appendix 2 to that effect, such as:

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<sup>2</sup> Wording is for illustrative purposes only and reporting accountants may amend as appropriate.

“CCABI issued Information Sheet 01/2014 in June 2014 stating that the Law Society of Ireland has confirmed that reporting accountants may continue to use the Accountant’s Report format from the Solicitors Accountants Regulations 2001 to 2006 for reports on accounting periods ending on / before 31 December 2013, and we have opted to use this format for the [day month 2013] report of [client’s name].”<sup>2</sup>

## 2.2 Accounting periods ending on/after 1 January 2014 and before 31 December 2014

Such accounting periods will consist of a number of months (up to 31 December 2013) during which S.I. No. 494 of 2013 did not apply and a number of months (from 1 January 2014 onwards) during which it did apply. The revised Accountant’s Report, as specified in S.I. No. 494 of 2013, ignores this fact and appears to require the accountant to issue an opinion on compliance with the requirements of S.I. No. 494 of 2013 for the whole period.

The Law Society has, in this regard, confirmed to CCABI that, when considering reporting accountant’s reports for the period of overlap of the regulations, the accountant’s opinion on a solicitor’s compliance will be interpreted by the Society as follows:

- *For reporting accountant’s reports on accounting periods up to the year ended 31 December 2013* - on whether the solicitor has complied with the solicitors accounts regulations 2001, 2005 and 2006 because the 2013 regulations were not in operation; and
- *For reporting accountant’s reports on accounting periods ending after 31 December 2013* - for the period ended 31 December 2013 on whether -the solicitor has complied with the solicitors accounts regulations 2001, 2005 and 2006 and for periods after 31 December 2013 on whether the solicitor has complied with the solicitors accounts regulations 2001, 2005, 2006 and 2013.

The Law Society has confirmed that the **revised** Accountant’s report format per S.I. No. 494 of 2013 is required for solicitor clients with accounting periods ending after 31 December 2013, e.g. 31 March 2014. As set out above, however, the Law Society has confirmed that solicitors will have been expected to have complied with the requirements of S.I. No. 494 of 2013 from 1 January 2014, and thus reporting accountants will report accordingly, i.e. for a 31 March 2014 year end they will report on compliance with the Solicitors Accounts Regulations 2001 to 2006 for the nine months to 31 December 2013 and on compliance with the Solicitors Accounts Regulations 2001 to 2013 for the three months from 1 January 2014 to 31 March 2014.

Reporting accountants may consider adding a comment to Appendix 2 of the revised report to reflect the above confirmation of the Law Society regarding compliance with S.I. No. 494 of 2013, such as:

“As noted on [page 2] of this report, the accounting period of [client’s name] covered by this report commenced on [commencement date] and ended on [ending date]. As a consequence, for the period from [commencement date] to 31 December 2013, [client’s name] was not subject to the Solicitors Accounts (Amendment) Regulations 2013 – S.I. No. 494 of 2013. CCABI issued Information Sheet 01/2014 in June 2014 stating that the Law Society of Ireland has confirmed that compliance with the requirements of S.I. No. 494 of 2013 is only expected for the period from 1 January 2014 onwards, and the opinion of the reporting accountant is to be interpreted accordingly.

We have prepared our report and provided our opinion having regard to this confirmation from the Law Society of Ireland.”<sup>2</sup>

### **3. *Balancing Statements per Regulation 12(7) (2001) as amended***

Regulation 12(7) of the Solicitors Accounts Regulations 2001, as amended by S.I. No. 494 of 2013, requires the solicitor client to prepare a balancing statement, comparing and balancing clients’ ledger accounts, clients’ ledger control accounts and clients’ bank accounts. An anomaly in the wording of the regulation has resulted in there being no explicit requirement for the Solicitor to include ledger accounts, ledger control accounts or bank accounts for either *controlled trusts* or *insolvency arrangements* in the balancing statements.

Against that, Appendix 3 of the reporting accountant’s report, as specified in S.I. No. 494 of 2013 requires reporting accountants to extract the relevant amounts for clients, controlled trusts and insolvency arrangements from the solicitors’ accounting records to complete the table in the appendix.

This situation with regard to controlled trusts has existed for a number of years and common practice has developed such that solicitors have included these amounts in their balancing statements and reporting accountants have reported same in Appendix 3 of the Accountant’s Report. In discussions with CCABI, the Law Society has confirmed that solicitors should similarly include relevant insolvency arrangement amounts in their balancing statements also.

In an individual case where the solicitor does not include the relevant amounts in the balancing statements, the reporting accountant will need to extract the amounts from the accounting records of the solicitor for inclusion in Appendix 3.

As always, reporting accountants consider any matters arising and the implications for the reporting accountant’s report.

Reporting accountants will also note that whilst the wording of Regulation 12(7) (2001) as amended might appear to suggest that insolvency arrangement moneys may be held in client account; this is not the case, as

it is prohibited under both the PIP Regulations 2013 and the Solicitors Accounts Regulations 2001 to 2013.

#### **4. *Accounting records requirements per Regulation 20 (2001) as amended***

Further wording anomalies have been identified with regard to the accounting records requirements of solicitors in Regulation 20 (2001) as amended including the following.

Regulation 20(1)(f) requires that original returned paid cheques be procured regularly and maintained by the solicitor for cheques drawn on client account, controlled trust account and non-controlled trust account, but does not mention insolvency arrangement accounts. In discussions with CCAB-I, the Law Society has stated that solicitors should procure regularly and maintain returned paid cheques for cheques drawn on insolvency arrangement accounts.

Regulation 20(1)(c) requires that solicitors keep a record of bank lodgements of moneys received by solicitors, distinguishing between lodgements made to office account and lodgements made to client account or to controlled trust account or to non-controlled trust account, but does not mention insolvency arrangement accounts. However, in order for a solicitor to be able to demonstrate compliance with the new requirement in Regulation 19A, as inserted by Regulation 7 of S.I. No. 494 of 2013, that a PIP who receives, holds or controls insolvency arrangement moneys is to pay the moneys without delay into “an insolvency arrangement account opened and maintained solely for the insolvency arrangement concerned”, records of bank lodgements are going to be necessary in any case.

#### **5. *Definition of ‘client ledger account’ and prohibition on debit balances in Regulation 7 (2001) as amended***

Regulation 2 (2001) as amended does not include controlled trust account or insolvency arrangement account in the definition of ‘clients’ ledger account’. One consequence of this is that Regulation 7(2) (2001), which prohibits debit balances arising on the ‘clients’ ledger account’ which are not totally offset by a credit balance arising on another clients’ ledger account in respect of the same client, appears not to include a similar explicit prohibition on such debit balances arising on controlled trust ledger accounts or insolvency arrangement ledger accounts.

Therefore, while a breach of the explicit prohibition on such debit balances arising on clients’ ledger accounts will give rise to a requirement on the reporting accountant to include such breaches in Appendix 2 of the accountant’s report, there is no explicit requirement to include details in Appendix 2 of such debit balances on controlled trust ledger accounts or insolvency arrangement ledger accounts in these regulations. All such debit balances, whether on clients’ ledger accounts, controlled trust ledger



accounts or insolvency arrangement ledger accounts, *in existence at the balancing dates* are, however, required to be reported in Appendix 3.

Debit balances arising on the controlled trust ledger accounts or insolvency arrangement ledger accounts which arise *during the accounting period but not at the balancing dates* are not explicitly required to be included in Appendix 2 of the accountant's report, though reporting accountants may consider the specific circumstances in deciding whether the attention of the Law Society should be drawn to such cases.