

## THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS LIMITED

### CODE OF PROFESSIONAL CONDUCT

#### INTRODUCTION

The Code of Professional Conduct (the "Code") provides a broad set of principles for the conduct of a Member's professional activity. It is not intended to set forth detailed rules, regulations and prescriptions. As such, the spirit of the Code is paramount in interpreting its application in individual situations.

It is recognized that the essence of the Society is its multidisciplinary nature and diversity. Members carry on their professional activities in the field of trust and estate work in a variety of settings. Additionally, many Members - notably accountants and lawyers - are subject to another professional code of conduct based on another professional qualification. In the event of any conflict between this Code and any other, Members should seek the guidance of the Society's Professional Standards Committee. Given the international and geographically diverse nature of the Society, Members also carry on their professional work in many countries with different legal and regulatory systems, rules, practices and customs. The intent of the Code is to distill a common set of principles of ethical and professional conduct for Members of the Society, in order to ensure that they achieve a high standard of professional practice, and to protect both the interests of the clients to whom services are provided and the interests of the Society.

Members also engage in a variety of different forms of professional relationships which may not include "member-client" within its strict meaning. For example, Members often act as fiduciaries, and have a relationship with beneficiaries, or are employees of institutions, some of which may also act as fiduciaries, where a Member may not have a direct client relationship but where the institution may. For convenience, the term "client" is often used throughout the Code, but it should be interpreted broadly to include, where appropriate, other forms of professional relationship, taking into account the spirit and objectives of the Code. Finally, the term "Member" should be taken to include an Affiliate of the Society.

## **1. GENERAL LAW AND RULES AND REGULATIONS OF THE SOCIETY**

### **1.1. Observing the Law**

A Member shall at all times ensure that his or her actions comply with the laws and regulations of any jurisdiction to which he or she is subject.

### **1.2. Assisting in a Breach of Law**

No Member shall knowingly assist his or her client to breach, nor shall he or she knowingly acquiesce in the breach of, the laws and regulations of any jurisdiction to which the Member is subject, and no Member shall knowingly provide active assistance to his or her client to breach the laws and regulations of any jurisdiction to which the client is subject.

### **1.3. Rules and Regulations of the Society**

A Member shall at all times comply with the rules and regulations of the Society. Failure to do so may subject the Member to disciplinary action.

## **2. COMPETENCE**

### **2.1. Exercise of Competence**

A Member shall at all times perform competent work for his or her client. Competent work requires the knowledge, skill, thoroughness and preparation reasonably necessary to perform the work, as well as performing the work conscientiously and diligently in a timely and cost-effective manner.

### **2.2. Maintaining and Enhancing Competence**

In order to maintain and enhance his or her knowledge and skills, a Member shall carry out appropriate professional development, including complying with the requirements for Continuing Professional Development established by the Society under rule 14, and shall adapt to changing professional requirements, standards, techniques and practices, including technological change.

### **2.3. Scope of Competence**

A Member should not undertake work for a client if he or she is not competent to perform the work, or is not able to become competent to perform the work without undue delay, risk or expense to the client. Where a Member feels he or she is not competent to handle the work, the Member should either decline to act, or obtain instructions from his or her client to retain or consult with a practitioner or other advisor who is competent to perform the work.

### **3. INTEGRITY**

A Member shall act with integrity and conduct himself or herself in a manner which inspires the confidence, respect and trust of his or her clients and the wider community. A Member shall not engage in conduct which brings into question the integrity of the Society or his or her own professional integrity and competence.

### **4. OBJECTIVITY**

A Member shall provide objective advice and exercise independent professional judgment. A Member should not permit his or her independence, objectivity or integrity to be compromised.

### **5. COURTESY**

A Member shall be courteous and considerate towards the people with whom he or she has dealings in the course of his or her professional work.

### **6. CONFIDENTIALITY**

#### **6.1. Holding Information in Confidence**

A Member owes a duty to hold in strict confidence all information the Member has acquired concerning the business and affairs of the Member's client in the course of the Member's professional relationship, and must not disclose such information in any way without the client's consent, unless required by law or because there is a professional obligation to disclose.

#### **6.2. Obligation Outlasts Member-Client Relationship**

The duty of confidentiality outlasts the professional relationship and continues indefinitely after a Member has ceased to act for a client.

#### **6.3. Safeguarding Confidential Information**

A Member shall take all necessary steps to safeguard the confidentiality of client information, in particular where there could be a conflict of interest with another client.

#### **6.4. Confidential Information Not to be Used for Personal Benefit**

Confidential information concerning the business and affairs of a client may not be used for purposes outside the scope of the professional services rendered, including for the personal benefit of a Member or a third party, without the client's prior consent.

## **7. HONESTY**

A Member shall be honest in the performance of his or her professional work and shall not knowingly provide information or make any statement which is false or misleading or engage in false or misleading conduct. A Member shall decline to act and shall withdraw his or her representation if he or she knows, or has reasonable grounds to suspect, that carrying out his or her client's instructions would involve assisting in an illegal activity.

## **8. CONFLICTS OF INTEREST**

### **8.1. Definition of Conflict of Interest**

A conflict of interest means an interest or duty that a Member has that (i) might adversely affect the Member's ability to provide independent, objective advice to his or her client or (ii) might adversely affect the Member's loyalty to his or her client or (iii) might be given precedence by a Member over the interests of his or her client. A conflict of interest can arise between a Member and his or her client, or between two or more clients or potential clients (for example, when a Member is asked to act for both parties to a transaction).

### **8.2. Avoidance of Conflicts of Interest**

A Member shall not act, or continue to act, in a matter where there is or is likely to be a conflict of interest, unless (i) the Member makes full and frank disclosure of the existence of the conflict or potential conflict to his or her client, in order to allow the client to make an informed decision, and (ii) the client consequently agrees in writing to the Member acting or continuing to act.

### **8.3. Managing Conflicts of Interest**

Arrangements for the resolution of a conflict of interest should be confirmed in writing by the Member with his or her client. These will include any agreement in which the client consents to a Member acting or continuing to act where a potential or actual conflict of interest exists. Any such arrangements should be periodically reviewed in light of changing circumstances.

### **8.4. Financial Involvement with Clients**

If a client intends to enter into a business transaction with a Member, or to give or acquire any financial interest involving the personal benefit of a Member, whether directly or indirectly, including through a related entity, prior to proceeding with such a transaction the Member shall ensure that:

- (i) the nature of the Member's actual or potential conflict of interest is fully disclosed to the client;

- (ii) the client is advised to seek independent legal advice; and
- (iii) the client's written consent to the transaction is obtained.

A Member should avoid entering into a debtor-creditor relationship for his or her personal benefit with his or her client unless the client is a commercial enterprise whose business would include such a transaction in the normal course of its activity. For the purpose of this rule, a debtor-creditor relationship shall not be considered to arise in respect of fees and disbursements or other transactions which arise in the normal course of a Member's provision of services to a client.

## **9. HANDLING OF CLIENT PROPERTY**

### **9.1. Duty of Care**

A Member shall ensure that all rules relating to the preservation and safekeeping of client property are adhered to, and shall exercise care for his or her client's property as a careful and prudent owner would in dealing with like property.

### **9.2. Notification of Receipt of Property**

A Member shall promptly notify his or her client when the Member receives any money or other property of the client, unless the Member knows that the client is already aware that it has come into the Member's custody.

### **9.3. Identification and Segregation of Client Property**

The client's property should be clearly labelled, identified, placed in safekeeping and segregated where appropriate from the Member's property. Records should be maintained of all client property so that it may be properly accounted for.

### **9.4. Delivery of Client Property**

Client property shall be delivered to the order of the client upon request, subject to any lien the Member may have under applicable law or to any third-party rights or interests. Where there is any question as to the person entitled to receive the property, the Member shall seek professional advice, or where appropriate, recourse to a court of competent jurisdiction for direction.

## **10. FEES**

### **10.1. Basis of Charge**

Fees for services rendered by a Member shall be fully and appropriately disclosed, fair and reasonable. A fair and reasonable fee should have regard to such factors, among others, as the following:

- (i) the time and effort required and spent;

- (ii) the complexity and importance of the work;
- (iii) customary charges of other practitioners of similar standing in the locality in like matters, or tariffs authorised by local law;
- (iv) the result obtained;
- (v) the value of the subject matter; and
- (vi) any special circumstances, including urgency.

For further clarity, a Member may agree with his or her client to fix his or her fees or to another basis of charge.

## **10.2. Disclosure and Fee Arrangements**

A Member should make efforts to avoid fee disputes. Before undertaking work for a client, or accepting an appointment as a fiduciary for remuneration, a Member should ensure that the client or interested party is aware of the basis on which fees will be charged, how expenses incurred on behalf of a client or interested party will be treated, and any limits or conditions with regard to liability of the Member to the client or interested party. It is often appropriate to set out these matters in writing, including by reference to a retainer or engagement letter or terms of business, and to update same from time to time to reflect current terms of business.

## **10.3. Fiduciary Relationship**

A fiduciary relationship exists between a Member and his or her client whereby the client's interest is primary. A Member must fully disclose any fee, commission, rebate, compensation, or benefit to be received from a person or entity other than the client at the outset of rendering any service or providing advice. A Member must ensure that where such compensation is received, any advice given is always in the best interests of the client and that the Member's duty of care and professional competence are not compromised in any way.

## **11. INDEMNITY INSURANCE**

A member must hold appropriate professional indemnity insurance. Members must not undertake work for which they are not appropriately indemnified. Members may wish to advise clients that they hold PII cover in their client care/engagement letters.

## **12. ADVERTISING**

Advertisement or other forms of promotion of professional services by a Member should be accurate and should not mislead, be likely to cause public offence or reflect adversely on the Member, the Society, other Members or fellow professionals, such as by containing disparaging references to, or disparaging

comparisons with, their services.

### **13. RELATIONSHIP WITH THE SOCIETY**

#### **13.1. Provision of Information to the Society**

A Member must provide such information as is reasonably requested by the Society without unreasonable delay, subject to any applicable legal privilege or duty of confidentiality, and to any legal or professional obligations of the Member to maintain confidentiality. A Member must reply without unreasonable delay to any communication from the Society which requires a response.

#### **13.2. Compliance with the Disciplinary Process and Orders from the Disciplinary Panel**

A Member is subject to the Society's disciplinary processes in respect of a complaint against him or her. A Member must comply with any order from the Disciplinary Panel, including orders in respect of costs and fines. Failure to comply with such an order will in itself be a disciplinary matter.

#### **13.3. Obligation to Notify the Society**

A Member must promptly inform the Society if he or she:

- (i) is convicted of a criminal offence (other than a minor traffic offence or misdemeanour or similar minor infraction);
- (ii) is notified of disciplinary action against him or her by another professional body to which he or she belongs;
- (iii) has a bankruptcy order made against him or her;
- (iv) enters into a voluntary arrangement with his or her creditors; or
- (v) is disqualified as a director, or enters into a disqualification undertaking.

### **14. CONTINUING PROFESSIONAL DEVELOPMENT ("CPD")**

A Member shall fulfill the requirements of the CPD scheme established by the Society. Please read the STEP CPD Policy for further information.

### **15. NON-DISCRIMINATION**

A Member shall act at all times in a non-discriminatory way, and shall observe the requirements of human rights and non-discrimination legislation to which he or she is subject. Except where differential treatment is permitted by law, a Member shall not discriminate with respect to partnership or employment of other

practitioners or other persons or in his or her professional dealings, activities and provision of professional services.

**16. CONTINUITY ARRANGEMENTS**

A Member shall ensure suitable continuity arrangements are in place for the conduct of his or her practice or business in the event of his or her prolonged incapacity or death.

*Approved by Council on 18 September 2009  
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