

# Clark Boyce

## Lawyers

### TERMS OF ENGAGEMENT

These Terms of Engagement (“terms”) will apply to all services that Clark Boyce (“we”, “our” or “us”) provides to clients (“you” or “your”) unless otherwise agreed in writing.

#### 1. Client

Our client will be the party or parties identified in the letter or email accompanying these terms and will be the only party or parties to whom services will be provided. We may, however, require that the provision of services will be guaranteed by a related party. The provisions of clause 7 will then apply.

#### 2. Services and role

These services will be as agreed between us from time to time. Our ability to provide services will be dependent upon our having fully complied with obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“AML/CFT”). Until such time as the requirements of Customer Due Diligence or, if required, enhanced Customer Due Diligence is fully completed, we will not be able to act for you or accept your instructions. We will do everything we can to assist you in completing these requirements. Our duties are owed only to our client(s) and any advice given is for the benefit of that or those client(s) alone. All services provided will be carried out in accordance with applicable laws and the rules of professional conduct of the New Zealand Law Society.

We do not hold ourselves out to be expert in all fields of law, and subject to first obtaining your instructions we will, if necessary, or desirable to do so, secure advice on particular aspects of the matter on which you have instructed us from other professionals or experts.

Our services will never include providing you with investment or financial advice, and unless we specifically advise on it, tax advice, but we will, if you so request, assist you in obtaining such advice. We are only qualified to advise on New Zealand law. If we do assist you on matters governed by foreign law, we do so on the basis we are not responsible in relation to your position under that law and whether or not we have obtained foreign law advice on your behalf.

When we have fulfilled your instructions our retainer with you will end.

#### 3. Confidentiality

Except to the extent we are required to comply with the legislative requirements of AML/CFT, we will hold in confidence all information concerning you. However, any information relating to your affairs that we acquire during the course of our acting for you will be kept entirely in confidence. In all circumstances, we will not disclose any of this information to any other person except as:

- (a) Authorised by you; or
- (b) To the extent necessary or desirable to enable us to carry out your instructions; or
- (c) To the extent required by law or by the Law Society’s rules.

#### 4. Basis of charges

We will charge a fee which is reasonable for the services provided to you. The hourly rate of the people working on your file may be one of the matters that will be taken into account. Further factors which we may take into account are set out in our Client Service Commitment which can be viewed on our website: [www.clarkboyce.co.nz/csc](http://www.clarkboyce.co.nz/csc).

If requested to do so we will give an estimate of the likely fees that may be incurred in providing you our advice. However, it is important to bear in mind that it is not always possible to accurately determine the amount of fees and expenses that may arise in any particular instruction. For that reason, any estimate provided will be a guide only and not a fixed quotation unless specifically agreed otherwise. Where any estimate given is likely to be materially exceeded, we will endeavour to advise you and provide you with an updated estimate.

We may also invoice you for a standard service charge to cover general office expenses provided by us (for example photocopying, faxes, telecom, bank charges, deliveries and postage). This will be clearly shown on invoices as a fee charge and not as a disbursement.

## **5. Other charges**

It is likely that we will incur disbursements and other expenses (that is, moneys we may pay for you) or on your behalf, and which are properly required to undertake our services to you. We may ask you to pay us in advance a stipulated amount on account of our professional services, and we may require that you pay us for other charges or disbursements before we incur those. If we receive from you a payment in advance for fees, we will not take those fees until we have rendered you an account for the services provided.

## **6. Billing and accounts**

We may render interim invoices to you from time to time (often on a monthly basis) and always will send you a final invoice on completion of your instructions or termination of our engagement. We will also report to you on at least an annual basis in respect of any moneys we may hold on your behalf.

You specifically authorise us to deduct any outstanding fees and disbursements from funds held on your behalf whether from amounts prepaid or received by us on your account. Further, you acknowledge any such deduction is to be treated in all respects as if you had remitted such payment to us without reservation.

Our accounts are payable in full on the 20<sup>th</sup> day of the month following the date of issue of our invoice. If payment is not made on the stipulated date, then without prejudice to our rights, we may charge interest at a rate of 15% per annum on any amount outstanding from time to time. If we choose to take action to recover moneys due, we will charge you collection costs on a solicitor/own-client basis, may instruct an outside agency to recover fees on our behalf, and/or stop continuing to work for you immediately.

## **7. Liability for payment**

Each client (and if there is more than one) engaged by us will all be jointly and severally liable for payment of our fees and disbursements.

If instructions are received from you in your capacity as director and/or shareholder of a limited liability company or as a settlor, trustee, or appointer of a trust or estate, then such instructions are accepted on the basis that you are at all times personally responsible as principal debtor for payment of our fees and disbursements. You personally indemnify us for the payment of our fees rendered to any such entities. We do not have to exhaust our remedies against any limited liability company, trust or estate before seeking recovery from you personally.

## **8. Joint instructions**

When acting for a joint client or more than one client(s) in a particular matter, you acknowledge we may, but are not required to accept or act on instructions from any one person.

## **9. Third parties**

Although you may expect or otherwise be entitled to be reimbursed by a third party for our fees and expenses, and although our invoices at your request or with your approval may be directed to a third party,

nevertheless you will always remain responsible for payment if the third party fails to pay us.

#### **10. Electronic communications**

Unless otherwise instructed by you, we may communicate with you and others by electronic means. You recognise and accept that such communications may not be secure and may be subject to unauthorised interception, hacking, interference, error or virus. While we take all reasonable steps to protect our communications from such issues, we do not accept any responsibility, and will not in any circumstances be liable for any damage or loss if there is any unauthorised interception, hacking, interference, error or virus.

#### **11. Files and documents**

We will retain files (and the retention may be electronic and/or a physical file) that we establish on a matter and any other documents you leave with us for at least seven (7) years after the end of our retainer. You authorise us without further reference to you to destroy all files and documents for the matter (other than any documents that we specifically hold in our safe custody for you) seven (7) years after our engagement ends or earlier if we have converted and stored those files and documents to an electronic format. We may store those files and documents at premises outside our offices in what is referred to as “the Cloud” and operated by independent service contractors. If you uplift your files or documents, we may make copies of them before giving them to you. We will not be obliged in any uplift of our files to provide any of our own file notes.

#### **12. 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 Law Society Rules. This may mean that we cannot in any circumstances act for you in respect of a particular matter. In such circumstances we will endeavour to assist in finding competent representation for you.

#### **13. Duty of care**

Our duty of care is to you and not to any other person. We must expressly agree before any other person may rely on our advice. If a third party does rely on our advice without our prior written consent, we shall not be liable for any loss, cost or expense to you or the third party as a result of that. Nor shall we ever be liable to you or any third party for any consequential, loss of profit, loss of opportunity or other consequential economic loss.

#### **14. Trust account**

We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices).

If we are holding significant funds on your behalf we would normally lodge these funds on interest bearing deposit with a New Zealand registered bank either on call or, with your agreement, for a fixed term. We are not responsible for obtaining the best interest rate available at the time your funds are placed on interest bearing deposit or for any loss of interest that you may suffer as a result of any delay in placing your funds on interest bearing deposit.

Our trust account is not audited.

#### **15. Termination**

You may terminate our retainer at any time. We may terminate our retainer in any of the circumstances set out in the Law Society Rules. If our retainer is terminated, you must pay us all fees and expenses incurred up to the date of termination. We may also claim a lien over any file held on your behalf until fees are paid in full or arrangements satisfactory to us have been agreed.

**16. Changes to these terms**

We may amend/revoke/replace these terms at any time. If we do so, we will provide notice of such on our website, and the amended terms will take effect immediately.

**17. Law and jurisdiction**

These terms are governed by New Zealand law and are subject to the exclusive jurisdiction of the Courts of New Zealand.

**Signing**

Please confirm, by signing below, your agreement to the above Terms of Engagement. Please then either send back to us at PO Box 79122, Avonhead, Christchurch 8446, or scan a copy of these signed terms. If we do not receive either a scanned copy or the signed agreement, or you have otherwise raised an issue with us, within one calendar month from the date these terms were sent to you, then you will be deemed to have accepted these Terms of Engagement and our retainer will continue on that basis.

Signed by Client(s)

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