



PRACTICE ADVISORY

BANKING PROCEDURES FOR PAYMENTS IN EXCESS OF \$25 MILLION

The Law Society recognizes there may be situations when it is more expedient for law firms to withdraw monies from their pooled trust account using a wire transfer, rather than a traditional cheque as required by Law Society Rule 90.¹ Wire transfers allow for the electronic movement of funds worldwide from one financial institution to an account at another financial institution according to the client's instructions. Wire transfers are completed on a per transaction basis and are carried out by the bank.

While there are a number of advantages to wire transfers, their use also raises concerns about the security of trust funds, particularly with respect to the authorization, recording and documentation of the transaction.

Law firms must have written authorization of the Law Society prior to transmitting funds by wire transfer.

Generally, the Society will approve the use of a wire transfer if firms adopt the following procedures:

INSTRUCTIONS TO WIRE TRANSFER

The firm must obtain written instructions to initiate a wire transfer of funds. These instructions may come from the client (i.e. a client may request a settlement be wire transferred to his/her personal bank account), or another law firm (i.e. a vendor's lawyer may request that the purchaser's lawyer wire transfer funds to the law firm's trust account). Instructions might also come from the intended recipient of the funds (i.e. a payment to a process server, a payment to a beneficiary). As instructions provided verbally might result in errors, the firm must obtain written instructions, which include the following information about the bank account into which funds are to be wired:

- Name in which the bank account is held.
- Name of bank, address, and telephone number.
- Routing/Transit number, and bank account number.
- Amount of funds to be wired.

The written instructions must also include the name of the person(s) to whom the funds are to be wired (if it differs from the name in which the bank account is held.)

¹ No member may pay an amount out of a clients' trust account except by cheque bearing the signature or countersignature of the member or of another member that he-or she has designated as a signing authority.



Written instructions include a letter, fax or email. These instructions must be filed with the firm's trust records in the accounting department, and a copy placed on the client's file.

INSTRUCTIONS PROVIDED BY THE FIRM TO THE BANK

The instructions provided to the bank must also be in writing to minimize errors and document the transaction. The instructions should be in the form of a letter or requisition specifically designed for wire transfers, and should be delivered, mailed or faxed to the bank.

The instructions should request that the bank return the authorizing letter or requisition, confirming the transaction has been carried out as authorized.

Law Society Rule 90 requires that all cheques must bearing the signature or countersignature of the member or of another member that he or she has designated as a Signing authority. The documentation forwarded to the bank to initiate a wire transfer must also meet this requirement. The written instructions to the bank must be signed by at least one lawyer in the firm with trust signing authority. The Society strongly recommends the use of two Signatures to provide an added level of control. If the firm has a policy that requires two Signatures on a cheque, this same level of control should be extended to the use of wire transfers.

Firms should consider sending a copy of the instructions to their client for his or her records. A copy of the instructions to the bank (including the authorizing signature) must be filed with the firm's trust records in the accounting department. and a copy placed on the client's file.

RECORDING THE TRANSACTION IN THE ACCOUNTING RECORDS

Law Society rules require firms and members to maintain up-to-date trust records and supporting documentation. In order to comply with this rule, firms must establish procedures to ensure all wire transfers are recorded in the accounting records-at the time the transaction takes place.

The following are suggested methods to ensure wire transfers are recorded in sequence with the other withdrawals from the trust account:

- Issue a pooled trust cheque, and forward the cheque to the bank along with the wire transfer instructions or,
- Use a pooled trust cheque without actually issuing the cheque (Le. it may be voided and attached to the firm's copy of the wire transfer instructions). The cheque number is used to record the wire transfer in the trust account records or,
- Use a pre-numbered requisition specifically designed for wire transfers or,
- If the firm feels that another method will work well within the law firm, this should be discussed with a Law Society Auditor prior to its adoption.



CONFIRMATION THE TRANSACTION HAS BEEN CARRIED OUT AS AUTHORIZED

Firms must obtain sufficient documentation from their bank to support all wire transfers. Similar to the return of a cleared cheque, the bank should return the firm's authorizing document, stamped by the bank, or bearing some other confirmation indicating the transaction has been carried out as authorized.

Some banks will provide this advice within a few days of the transaction. However, this may vary from bank to bank, and even from branch to branch, as will the type of documentation received. Therefore it is the firm's responsibility to discuss its needs with the bank and make certain that the documentation provides sufficient support for the transaction.

OTHER

All documentation supporting the wire transfer (i.e. instructions, requisition slip [if applicable], instructions to the bank, confirmation from the bank) should be compared to ensure the transaction was accurately completed. There should be a follow-up on any documents that are not returned. The firm should assign this responsibility to one person, and if possible, this person should not be the same person who initiated the wire transfer. The documents must then be filed with the firm's trust records in the accounting department. A copy of this information must also be filed on the client file.