

Controlled Money

Controlled Money Accounts (“CMA/s”)

This guidance note has been prepared, for the benefit of law practices and external examiners. A detailed check list for CMAs is available.

CMAs are subject to specific requirements under the Legal Profession Act 2008 (“**LPA**”) and Legal Profession Regulations (2009) (“**LPR**”).

Controlled Money

s205(1) of the LPA defines controlled money as “money received or held by a law practice in respect of which the practice has a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control”.

Controlled Money Records

The following records are to be maintained for CMAs:

- Written direction;
- Controlled money receipts;
- Initiating record of withdrawals;
- Register of controlled monies consisting controlled money movement records;
- Monthly listing of controlled money accounts;
- ADI (Bank) Statements
- Trust account statements.

Please refer to r54 to 58 LPR for full details.

Written directions

A written direction must be obtained from a person on whose behalf the money was received (for example, the client) before money can be deposited to, or withdrawn from, a CMA. s205(1) & s218(3) LPA refer.

If no written direction is held, the law practice must first deposit the money into the general trust account pending written instructions from the person entitled to the funds.

The written direction by the client should be specific to avoid possible breaches of the Corporations Act 2001 as law practices are unable to give financial advice to a client (except where the law practice has a Australian Financial Services Licence).

It may be prudent for the written direction to have the details of the matter, reason for the investment, name of the ADI and the type of account (e.g. type of product that an ADI offer) inserted in the direction given to the law practice. The law practice should refrain from giving the client advice about investing with a specific ADI and/or type of ADI account.

Maintenance of CMA accounts r54 LPR:

A controlled money account must include:

- i. the name of the law practice concerned;
- ii. the expression “controlled money account” or the abbreviation “CMA” or “CMA/c”;
- iii. such particulars as are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.

Please refer to r54(5) LPR for full details.

Receipt of controlled money:

The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.

The following particulars need to be included: —

- i. the date the receipt is made out and, if different, the date of receipt of the money;
- ii. the amount of money received;
- iii. the form in which the money was received;
- iv. the name of the person from whom the money was received;
- v. details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
- vi. particulars sufficient to identify the purpose for which the money was received;
- vii. the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;
- viii. the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression “controlled money receipt”;
- ix. the name of the person who made out the receipt;
- x. the number of the receipt.

Please refer to r 55(5) for full details of requirements.

Withdrawal must be authorised

The client’s written direction is required to withdraw money from a CMA, s218(3) and 218 (5) LPA and r57 LPR refer. A withdrawal of money from a CMA must be effected, under the direction of or with the authority specific persons, r57 LPR refers.

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Controlled money can only be drawn from the controlled money account by:

- (a) cheque, in accordance with r44 LPR, or
- (b) electronic funds transfer, in accordance with r45 LPR, and not otherwise.

The following withdrawals are specifically prohibited:

- (a) Cash withdrawals,
- (b) ATM withdrawals or transfers.
- (c) Telephone banking, withdrawals or transfers.

Register of controlled money

A law practice that receives controlled money must maintain a register of controlled money including the following:

- i. A separate record for each CMA;
- ii. the name of the person on whose behalf the controlled money is held;
- iii. the person's address;
- iv. particulars sufficient to identify the matter;
- v. the date the controlled money was received;
- vi. the number of the receipt;
- vii. the date the money was deposited in the controlled money account;
- viii. the name of and other details clearly identifying the controlled money account;
- ix. the amount of controlled money deposited;
- x. details of the deposit sufficient to identify the deposit;
- xi. interest received;
- xii. details of any payments from the CMA

Within 15 working days after each month, the law practice must prepare and keep as a permanent record a statement as at the end of the month.

Please refer to r58 for full details of the requirements.

Monthly listing of controlled money accounts

The law practice is required to prepare a statement listing its controlled money accounts as at the end of each month detailing:

- a. The name, number and balance of each controlled money account held; and
- b. The name of the person on whose behalf the controlled money in each account was held; and
- c. A short description of the matter to which each account relates; and
- d. The date the statement was prepared.

The law practice must prepare the statement within 15 working days after the end of each month.

Controlled money control account

As a best practice it is strongly recommended to maintain a Control Money Control Account which records all transactions of all controlled money accounts. The control account could then be reconciled against the monthly listing of controlled money accounts.

Details of receipts and withdrawals in relation to all controlled money accounts would be recorded in the Controlled Money Control Account.

Interest Earned

Whilst a receipt is not required for interest or other income received from the investment of controlled money where the interest or other income is credited directly to a controlled money account, the regulations require the interest or other income to be recorded in the relevant controlled money movement record. If a controlled money control account is adopted, the interest or other income will also be recorded in that account and controls enhanced.

If a receipt is issued it would create a source record for bringing to account interest or other income.

Trust Account Statements – CMAs r60(6)

A controlled money trust account statement should be furnished as soon as practicable after the completion of the relevant matter, or after receiving a reasonable request.

Power or Authority r63

If a law practice is given a power or authority to deal with money for and on behalf of a person, EG, power of attorney, guardianship order or an authority to sign on a person's bank account, whether alone or jointly, the practice is required to keep records in accordance with r63 LPR.

If an associate of the law practice is the executor of a deceased estate and opens a bank account in the name of the associate as executor of the estate, the account will be a power money account.

Alternatively, the associate may choose to instruct the law practice to open a CMA for the estate, or may instruct the law practice to receive money on behalf of the estate to the law practice's general trust account. The executor may then instruct the law practice to withdraw the money from the general trust account and invest it for the benefit of the estate in a CMA or an investment money account.

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If the money is invested in an investment money account, the money, when withdrawn from the investment money account, is to be deposited to the law practice's general trust account and disbursed therefrom in accordance with the executor's instructions. If the money is invested in a CMA, the money can be disbursed direct from the CMA, in accordance with the executor's instructions, without having to first return the money to the general trust account.

It is recommended that as with CMAs a written direction is obtained prior to trust monies being invested.

Contact

If you have any queries, please contact:

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