The Law Society of Manitoba
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Electronic Funds Transfer Guideline

1. This guideline is to be read in conjunction with the Law Society Rules and Practice Direction 03-02, and is intended to provide background information to the profession regarding requirements, as well as recommendations and considerations for the safe use of electronic funds transfer ("EFT") for trust money. Appendix A includes approval criteria the audit department will use assessing an application for blanket EFT approval.

2. EFT is set up through a member's or firm's savings institution and if your current savings institution cannot meet the Society's requirements then you must either open a trust account at a savings institution that can comply with the requirements or EFT is not an option for your firm.

3. EFT may include electronic wire transfers, and other forms of electronic payments such as Interac e-transfers, bill payments and transfers between a firm's various trust and general bank accounts. It is up to a firm to determine which online services they decide to use, based on their business needs. Regardless of the type(s) of EFT service(s) used, all must comply with Law Society minimum requirements. If the firm is only using one form of EFT, they are to ensure restrictions are in place such that all other forms of EFTs are prevented. For example, if only electronic wire transfers are being initiated with online banking, then the trust account must be restricted so that no Interac e-transfers or other forms of EFT can be done.

4. All types of EFT require a minimum of two users – one to initiate the withdrawal (the initiator) and the other to approve it (the approver). The initiator may be a lawyer, but also can be a support staff person. However, the approver must be a practicing lawyer. If the approver wants to make a change to the transaction (e.g. a change to the amount, the payee, etc.), the original transaction must be cancelled and a new transaction initiated.

5. Sole practitioners with no support staff who want to apply to use EFT for their trust accounts should contact the Audit Department for further direction.

6. The EFT requisition form is the equivalent of preparing a trust cheque and therefore must be used for each EFT. It will be used as the source document for entries in the member's or firm's accounting system once the transaction has received final authorization in the online banking platform. A sample EFT requisition form has been prepared by the Law Society for use by

firms. A firm is also welcome to use its own requisition form provided that it contains all of the necessary information.

7. Not all savings institutions retain online reports such as audit reports and withdrawal confirmations for the same retention periods. In addition, not all confirmations contain the same level of detail so a firm must ensure it is obtaining one with full details. Confirmations, which are to be obtained immediately after the transaction, and other reports the firm is interested in keeping must be downloaded in a universally readable format or printed.

8. Additional control options for large dollar, recipients outside of Manitoba or international EFT include:

    a) A firm policy which requires an additional lawyer approval for any higher-risk transactions, resulting in a three-part approval process for such withdrawals; and

    b) Sending a small dollar test, such as $10, before sending the bulk of the funds. This allows the recipient to confirm receipt of the funds – with contact initiated by law firm staff, utilizing existing contact information in the client file - to ensure the test funds reached their desired destination before the full amount is sent later with the same payment instructions or template.

9. EFTs are an immediate form of payment that cannot be reversed easily if at all. It is imperative that the details of each payment are correct and that firms pay attention to any red flags that may arise during the transaction. Firms are advised to be on alert for changes in instructions from the client at the last minute, and changes received via email. Such last-minute changes are to be automatically treated with skepticism as they are a common fraud technique. Any changes must be confirmed with the client using another method of communication. It is crucial to be aware of any red flags that could indicate a possible fraud.

10. In order to receive Law Society Audit Department blanket EFT approval, a member or firm must have a robust risk prevention environment at their firm.[1] Examples of elements of such an environment include:

    a) Client communications policies and requirements which educate about the risks of EFT and establish a process which ensures accurate recipient details are received. Instructions from the client must be typed in a clear font and provided with a void cheque or similar source, as information the client obtains directly from their savings institution, in printed form, minimizes chances of error. This is especially critical for international destinations as there are additional codes, such as a SWIFT code, required. Consider also setting up a unique password with each client which they

[1] See Appendix B for risk prevention environment resources

would later need to provide for any future verbal financial instructions or confirmations to combat deepfakes or other fraud efforts;

b) Risk reduction measures which include fraud education and awareness for staff and lawyers. Firms need to make fighting fraud a part of their culture. Fraud prevention is not a “once and done”, lawyers and staff need to be constantly vigilant;

c) Processes designed to segregate incompatible duties where possible;

d) To foster clear communication among multiple users, online banking user IDs which clearly identify who the person is;

e) Requiring staff and lawyers to change their passwords frequently, as per the firm’s policies;

f) Reminding staff and lawyers not to share their passwords with anyone or store passwords in their browsers. Log-in credentials must also not be shared with third party applications or software for any reason, including for download banking data to your accounting software~~;~~

g) Ensuring the firm’s cyber security systems are maintained, are current and all firewalls are working properly;

h) Layers of protection for robust, effective safety practices, and recognition that threats can be internal or external. Routine cyber risk awareness training should be in place for new and existing staff to help reduce such risks as phishing attacks, the inadvertent installation of keylogger software, or deepfakes of either firm staff or clients; and

i) Ensuring there are policies in place for IDs, passwords, and all other accesses to be cancelled immediately when someone leaves the firm.

11. Other considerations for a comprehensive control environment include:

a) Monitoring trust accounts daily for unrecognized or unusual activity;

b) Where the savings institution has an electronic withdrawal tracking system, if the withdrawal is not confirmed received by the client by the next business day, then the firm should trace the withdrawal to see where it is and contact the savings institution if required;

c) Firms may also wish to consider having additional cyber insurance for more protection, or bonding support staff that are set up as users with online access to the trust account(s); and

d) Monitoring the general account regularly for unrecognized or odd activity, similar to trust account monitoring practices. It is recommended that firms continue or put in place other controls for their general accounts such as completing a monthly bank reconciliation.

12. Consistent with all forms of withdrawal from a trust account, firms must ensure EFT fees are charged to the general account.

13. EFT does not encompass any form of third-party withdrawals from a trust account, third-party payment service providers or currency exchanges. It is limited to transactions which can be made through an online banking platform of the savings institution(s) where your trust account(s) is(are) located.

14. When considering an online banking platform at a savings institution, trust account supervisors are reminded to keep in mind other law society requirements for trust accounts. In particular, you need be alert to any platform processes that might involve trust money being held, however briefly, in an account which either does not meet the definition of a savings institution in Rule 5-41, (which, for applicable savings institutions, must include Canada Deposit Insurance coverage), or where the interest on the account would not be payable to the Manitoba Law Foundation. Such platforms cannot be used for electronic funds transfer of trust money.

15. From the perspective of the Division 12 Client Identification and Verification rules (5-116 to 5-131), while rule 5-119(c) contains an exemption related to electronic funds transfer, this exemption is not expanded or changed by the use of EFT as contemplated by this Guideline, the Practice Direction 03-02 or the related Financial Accountability rules.

Electronic Funds Transfers Guideline Appendix A: Approval Criteria

To obtain Law Society audit department blanket EFT approval, a trust account supervisor must provide information regarding how their firm will apply the Society's electronic funds transfer requirements. While there is no specific application form, the trust account supervisor is to provide the information in writing, encompassing the following minimum requirements which are based on Practice Direction 03-02 and this Electronic Funds Transfer Guideline:

1. Procedures or processes the firm uses to ensure funds are available before using EFT (i.e. confirmed available funds);

2. A description of how instructions are received from the client, including situations where the instructions are not being provided in person by a recipient whose identity you have verified;

3. For the EFT requisition form:

   a) Identification of who will complete each requisition (such as accounting department staff, legal assistant, requesting lawyer, etc);

   b) Confirmation that the requesting lawyer will sign each requisition; and

   c) A copy of the requisition form to be used, or confirmation that the Law Society's sample EFT requisition form is to be used;

4. Confirmation that each transaction will be supported by a source document for review by the authorizing member before authorizing the EFT;

5. Confirmation that each person involved in the transaction will, at a minimum, carefully check:

   a) Recipient name;

   b) Each number in all recipient account numbers, including the transit number and, if applicable, all the SWIFT or other codes for international payments;

   c) Name and address of receiving savings institution; and

   d) The dollar amount;

6. Confirmation that your firm's online access to your savings institution's online banking platform operates with the following restrictions:

   a) access for each user requires multi-factor authentication (with a minimum of two factors);

   b) each transaction requires a minimum of two users, one to initiate the transaction and one to approve it;

c) while support staff may initiate a transaction, the user approving each transaction must be a lawyer; and

d) If the firm is only using one form of EFT, the trust account is restricted to prevent all other forms of EFT. For example, if only electronic wire transfers are being initiated with online banking, then the trust account is restricted so that no Interac e-transfers or other forms of EFT can be done;

7. Confirmation that your firm accounting records will be updated using the information in the requisition form once the transaction has received final authorization in the online banking platform;

8. Your savings institution can provide a confirmation of the withdrawal, within the required timeline, which includes the minimum required information:

   a) The date of the withdrawal;

   b) The source trust account name and account number;

   c) The destination name and account number, savings institution, and address;

   d) The identity of the person initiating the withdrawal;

   e) The identity of the member approving the withdrawal; and

   f) The amount of the withdrawal;

9. Identification of who will compare the EFT requisition form with the transaction confirmation and the timing of when such a comparison will be occurring. For example, a firm could have a policy whereby upon receipt of the confirmation, the legal assistant will compare the requisition and the confirmation, following up on any discrepancies immediately;

10. Confirmation that all documentation related to the EFT will be stored with the accounting records and the related client file;

11. If the lawyer or firm has any other firm pooled trust accounts where EFT is not being used (such as a restricted trust account or a pooled trust account located at a different savings institution), confirmation that the non-EFT trust accounts have been restricted to read or view only; and

12. Outline the risk prevention and control environment elements in your firm which are in place, including what measures have been put in place to provide additional safeguards for large dollar, recipients outside of Manitoba or international transactions.

Electronic Funds Transfers Guideline Appendix B: Resources

The Law Society website contains published or curated links to useful external resources to help firms understand how and why to create a robust control and cyber risk awareness and mitigation environment:

- Cyber Security Resource Library
- Trust Accounting Fundamentals Fraud Awareness
- Communique publication:
  - January, 2024 article "Moving money on emailed instructions" (and various links within the article)
  - January, 2022 article "Fraud Alert"

Further helpful resources include:

- LawPro's Avoid-a-claim blog - "How to ensure you have secure funds;
- To help understand more about deepfakes:
  - CPA Canada - "Beware of the rapid spread of deepfakes"
  - The Law Society of England & Wales – "A deep dive into deepfakes"