

WHAT WE LEARNED FROM THE COMPARATIVE EXERCISE

- There is much that looks similar/familiar across many jurisdictions: Existence of rules on holding/handling money, how it is held, withdrawn and reported on.
- What was striking in Asia/Pac region (Singapore, HK, NZ, Australia):
 - Costs in the system: Cost to lawyers/firms of systems, reporting etc. Costs to regulators of elaborate inspection systems – spread across profession. Some polluter pays elements..but.
 - Increasing evidence of lawyers opting not to hold money/have trust or client accounts.
 - Training: In Singapore but especially NZ, training required for managerial/financial roles as distinct from generic entry training.
 - Reporting: Monthly (NZ) through to annual (HK etc).
 - Guarantee/compensation/fidelity funds – not universal but more usual than not. Why?
 - Relationship with Banking system: In Australia, deposit taking institutions have a bigger role in monitoring use of funds and reporting

QUESTIONS THAT ARISE FROM THIS

- Follow up questions – what are the results of the different systems? Is there evidence that any of them have a lower failure rate? Have the introduction of changes (e.g. strengthened training requirements) produced improvements in jurisdictions where they have been applied?
- Is this experiment something to repeat? How can we make the most use of comparative exercises? How to keep the results accessible?
- What about the cross border dimension?

NEW SRA RULES ON OVERSEAS ACCOUNTS 2015

- Why? Problems of dual qualification, dual regulation, differential application in broadly similar circumstances due to corporate structure, gaps in protection/jurisdiction.
- Anyone practising anywhere in the world with the badge of an English solicitor or an entity which is under the control of an SRA regulated entity must abide by the following principle: **Overseas Principle 10: You must protect *client money* and assets.**
- An SRA regulated entity will, in addition be held responsible for the actions of any body it controls in any other jurisdiction and must ensure that these bodies adhere to the overseas rules.

SRA OVERSEAS RULE 5.1

In all dealings with **client money (overseas)**, you as a **responsible authorised body** must ensure that your **overseas practice**

- (a) keeps **client money (overseas)**, separate from money which is not **client money (overseas)** ;
- (b) on receipt, pays **client money (overseas)** into a **client account (overseas)** without undue delay and keeps it there, unless the **client** has agreed otherwise or it is paid directly to a third party in the execution of a **trust** under which it is held;
- (c) ensures by use of proper accounting systems and processes that **client money (overseas)** is used for the relevant **client's** matters only and for the purposes for which they have been paid;
- (d) uses money held as **trustee** of a **trust** for the purposes of that **trust** only;
- (e) establishes and maintains proper accounting systems and proper internal controls over those systems to ensure compliance with these rules;
- (f) returns **client money (overseas)** to the person on whose behalf the money is held promptly, as soon as there is no longer any proper reason to retain those funds;
- (g) keeps accounting records to show accurately the position with regard to the money held for each **client** and **trust** for a minimum period of six years; and
- (h) accounts for interest on **client money (overseas)** in accordance with local law and customs of the jurisdiction in which you or your **overseas practice** are practising and otherwise when it is fair and reasonable to do so in all circumstances.

ADDITIONAL NOTES

- Where there is a conflict with local rules, these take precedence.
- Material or systemic breaches must be reported
- The SRA can request accountants reports in relation to any overseas practice or practices through the responsible authorised body.
- NB. These rules are not in force and are subject to the approval of the Legal Services Board. If approved they would enter into force on 1 November 2015.