

**007**

**Exemptions Policy – Statutory Deposit Accounts v2.0**

<b>Purpose</b>	To set the framework for exemptions and outline the structures for managing Statutory Deposit Account exemptions within the Board.
<b>Application</b>	Applies to applications for exemption from statutory deposit account requirements pursuant to section 3.3.68 of the <i>Legal Profession Act</i> 2004.
<b>Notification</b>	LIV, Bar, Practitioners.
<b>Requirement</b>	As below.

**Applications for Exemption from Statutory Deposit Provisions**

**Background**

Section 3.3.64 of the *Legal Profession Act* 2004 (“the Act”) requires law practices or approved clerks who are required to maintain general trust accounts to deposit a specified amount into the statutory deposit account.

Section 3.3.63 of the Act specifies the required deposit amount, which is calculated each quarter on the basis of the trust account and statutory deposit balances in the previous quarter. The required deposit amount is 70 percent of the sum of the lowest daily balance of the trust account during the previous quarter and the amount held in the statutory deposit account on the last day of the quarter.

Deposits are required, under s 3.3.65(4) of the Act, by the 21<sup>st</sup> day of the first month of the quarter.

Under s 3.3.66 of the Act, the amounts deposited with the Board are held on trust for the law practice or approved clerk and are repayable on demand. However, if an amount is repaid to a law practice or an approved clerk and there is subsequently a sufficient amount to cover the required deposit amount, the law practice must deposit the required deposit amount with the Board.

Section 3.3.68 of the Act provides that the Board may, on application by a law practice or an approved clerk, exempt the practice or clerk from any of the provisions of Division 6 of Part 3.3 of the Act, for the period and subject to the conditions (if any) determined by the Board.

**Policy**

1. On application by a law practice or an approved clerk, the Board may grant an exemption from statutory deposit provisions for the period and subject to any conditions determined by the Board, including that:
  - (i) the Board may grant exemptions from the requirement to deposit the required deposit amount in a particular quarter in circumstances where the Board is

- satisfied that there are or will be insufficient funds in the trust account of a law practice or approved clerk to enable deposit of the required deposit amount; and
- (ii) the Board may grant exemptions such other exemptions from statutory deposit requirements as are appropriate in individual circumstances.
2. In circumstances where the application contends that there are or will be insufficient funds in the trust account to enable the deposit of the required deposit amount in a particular quarter, an application may be considered in the first instance by the Director, Corporate and Governance. In all other circumstances, applications will be considered by the Board.
  3. Exemptions in circumstances where there are or will be insufficient funds in the trust account to enable deposit of the required deposit amount:
    - (i) will only be granted in respect of the quarter in which the application is made;
    - (ii) will only be granted on condition that, if there is subsequently a sufficient amount in the law practice or approved clerk's trust account to enable the deposit to be made, the law practice or approved clerk must deposit the required deposit amount with the Board; and
    - (iii) may be granted on condition that a smaller deposit, determined by the Board to be reasonable in the circumstances, is made.
  4. For applications other than those referred to in paragraph (2) above, the Board will consider whether special circumstances exist making it appropriate to exempt the law practice or the approved clerk from the usual statutory deposit requirement(s).
  5. Where exemptions have not been sought on a timely basis, the Board may investigate failures to make the required deposit amount, or refer the matter to the Office of the Legal Services Commissioner to determine whether there has been unsatisfactory conduct or misconduct on the part of a legal practitioner.

## Applications

1. Applications in circumstances where there are insufficient funds in the trust account to cover the required deposit amount should be made on the **attached** form.
2. All other applications should be made in writing to the Board.