

From 5 October 2023 for all new contracts and renewed contracts



Separate bank account or complying instrument

Issue being addressed: to prevent co-mingling of retention money with Party A's other assets (e.g. working capital) to avoid loss in a receivership or liquidation.

What is now required / Recommendation: retention money needs to be held either in a separate bank account used solely for holding retention money in a registered New Zealand bank, or held in the form of a complying instrument (for example, a bond, a bank guarantee or an insurance policy).

If a complying instrument is chosen, this must be for an equivalent amount as the retention sum.



Reporting requirements and record keeping

Issue being addressed: insufficient record keeping and reporting of financial information by the party withholding retentions

What is now required / Recommendation: if you are withholding retentions (Party A) you must provide to the party entitled to payment (Party B) specific information about the retention amount. This must first be done by way of an initial report as soon as practicable after the sum becomes retention money, and then a further update every three months until the retention money trust ends.

The information needs to include:

- Total amount of retention money held
- Construction contract under which retentions are being held
- Date of retention
- Details of the account or complying instrument under which retentions are being held
- A statement of Party B's right to inspect Party A's accounts and records

As well as providing information, you must also keep accounting records for all retention money being held. These records must be available for inspection at the request of Party B at a reasonable time and without charge



Fines and penalties

Issue being addressed: a lack of consequences for Party A failing to comply with the Act and to encourage compliance

Consequences for breaching the Act: failure to keep retention money as required by the Act could result in a fine of up to \$200,000. A failure to keep proper accounting records and failure to provide information to Party B money could result in a fine of up to \$50,000 (each respectively).

Directors can now be fined personally for up to \$50,000 for each offence.