

THE
INSTITUTE OF
CHARTERED
ACCOUNTANTS
OF SCOTLAND



Regulation

Clients' Money Regulations

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Clients' Money Regulations

1. The Councils of the Institutes of Chartered Accountants in England and Wales, of Scotland, and in Ireland, have issued Client Money Regulations pursuant respectively to Clause 16 of the Supplemental Royal Charter of 1948, Clause 2 of the Supplementary Charter of 1951 and Bye-law 42(a). These Regulations, approved by the Council of the Institute of Chartered Accountants of Scotland, come into force on 1 April 2011. From that date, the Clients' Money Regulations dated 1 November 2002 are withdrawn. Withdrawing the Regulations dated 1 November 2002 does not affect any action taken by a Firm before 1 April 2011 to comply with these Regulations, or any breach of those Regulations by a Firm before that date, or the Institutes' ability to apply disciplinary or other sanctions for a breach of those Regulations.

Scope

2. These Regulations apply in relation to all United Kingdom and Ireland offices of Firms and, subject to Regulation 28, to the Principals of such Firms. A Firm must receive or hold Clients' Money only in accordance with these Regulations.

Clients' Money

3. "**Clients' Money**" means money of any currency (whether in the form of cash, cheque, draft or electronic transfer) which a Firm holds or receives for or from a client, including money held by an Insolvency Practitioner licensed by ICAS, money held by a Firm as stakeholder, and which is not immediately due and payable on demand to the Firm for its own account. Clients' Money must be held in the currency in which it was received unless the client instructs otherwise or in writing.
4. Where a Firm has a power or control over the client's own bank account, though not meeting the definition of Clients' Money, it must ensure that it has the specific written authority of the client acknowledged by the Bank before exercising that authority, and it must maintain adequate records of the transactions it undertakes.
5. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such shall not be regarded as Clients' Money for the purposes of these Regulations.

Interpretation

6. The words listed below shall have the meanings indicated:

A "**Bank**" means:

- (a) a branch in the United Kingdom or Ireland of:
 - (i) the Bank of England;
 - (ii) the Central Bank of Ireland;
 - (iii) the Central Bank of another member State of the European Union;
 - (iv) an authorised institution within the meaning of the Banking Act 1987; or
 - (v) a building society within the meaning of the Building Societies Act 1986 which has adopted the power to provide money transmission services and has not assumed any restriction on the extent of that power;

- (b) a branch outside the United Kingdom or Ireland of:
 - (i) a bank within the meaning of paragraph (a) above;
 - (ii) a bank which is a subsidiary or parent company of such a bank;
 - (iii) a credit institution, as defined in the First EU Banking Co-ordination Directive number 77/780 (EEC), established in a member State of the European Union other than the United Kingdom or Ireland and duly authorised by the relevant supervisory authority in that member State; and
- (c)
 - (i) a bank on the Island of Guernsey that is registered as a Deposit Taker under the Protection of Depositors (Bailiwick of Guernsey) Ordinance 1971;
 - (ii) a bank on the Island of Jersey including a registered person under the Depositors and Investors (Prevention of Fraud) (Jersey) Law 1967;
 - (iii) a bank on the Isle of Man including a bank which is licensed under Section 3 of the Isle of Man Banking Act 1975, as amended.

A **“Client Bank Account”** is an account at a Bank in the name of the Firm separate from other accounts of the Firm which may be either a general account or an account designated by the name of a specific client or by a number or letters allocated to that account and which, in all cases, includes the word “client” in its title.

A **“Firm”** means a sole practitioner who is a member (or a Regulated Non-member under Rule 19A of the Institute), or a partnership or a body corporate comprised in whole or in part of its members, the business of whom or of which includes carrying on the profession of accountancy.

An **“Independent Accountant’s Report”**, (in such form as the Council shall from time to time determine) covering such period as the Council or its nominee may require, is a report to the Chief Executive and Secretary or his nominee required in terms of Regulation 27(b) commissioned by the Firm which the Firm must ensure states whether in the view of the Independent Accountant:

- (a) it has adequate systems so that it can comply with the Regulations and make the confirmations necessary in terms of Regulation 26; and
- (b) it has complied with the Clients’ Money Regulations as at the reporting date; and
- (c) while carrying out the work in support of the Report, anything has come to the Independent Accountant’s attention which caused him or her to believe that the Firm has failed to comply with the Regulations.

“Independent Accountant” means a firm which is a registered auditor under the Companies Act 1989, the Companies (Northern Ireland) Order 1990 or the Companies Act 1990 in the Republic of Ireland and which has satisfied itself that it is independent of the Firm on which the Independent Accountant is reporting, in the terms referred to in Statement 1.201 (ICAEW), and Statement 1, (ICAS) of the Guide to Professional Ethics and Statement 1 of the Ethical Guide for Members (ICAI).

“Mixed Monies” means monies received (whether in the form of cash, cheque, draft or electronic transfer) or held by a Firm or Principal in terms of Regulation 8 which comprises or includes Clients’ Money and money due to the Firm.

[Note: For Firms authorised by the FSA, any monies so received or held which include an element of Investment Business Clients’ Money, as defined in the FSA Handbook, must be dealt with in accordance with the Handbook.]

“**Notice**” means written notice sent by first-class pre-paid recorded delivery to a Firm’s place of business or given in person by the Council (or its nominee) to any Principal.

A “**Principal**” means a member who is a sole practitioner or who is a partner in a Firm which is a partnership or who is a director of a Firm which is a body corporate.

7. References in these Regulations to any statutory provision or European legislation shall include any statutory modification or re-enactment thereof and any amendment thereto.

Opening a Client Bank Account

8. (a) Subject to Regulation 10 hereof, a Firm which receives or holds Clients’ Money or Mixed Monies or money which under Regulation 10 hereof the Firm is required to pay into a client account, must immediately open one or more Client Bank Accounts. Any Firm may maintain one or more Client Bank Accounts as appropriate. All money which is Clients’ Money must be held in a Client Bank Account.
- (b) On opening a Client Bank Account, a Firm must notify the Bank in writing that:
- (i) all money is held by the Firm as a trustee (or agent) and that the Bank may not combine the account with any other account or exercise any right to set off or counterclaim against that account for any money owed to it by any other account of the Firm;
 - (ii) interest payable on the money in the account must be credited to that account;
 - (iii) the Bank must describe the account in its records to make it clear that the money in the account does not belong to the Firm; and
 - (iv) the Bank must acknowledge in writing that it accepts these terms.
- (c) For a Client Bank Account in the United Kingdom or Ireland, if the Bank does not provide the acknowledgement required under sub-paragraph (b) above within 20 business days of the Firm sending the notice, the Firm must:
- (i) withdraw all money from the account;
 - (ii) close the account; and
 - (iii) deposit the money with another Bank in a Client Bank Account; or
 - (iv) as a last resort, return the money to the client.
- (d) A Firm may only hold Clients’ Money in a Bank outside the United Kingdom or Ireland if the client is informed in writing:
- (i) of the country or territory where the account will be held; and
 - (ii) either
 - that the Bank has given the acknowledgement required under Regulation 8(b)(iv); or
 - where the Bank’s acknowledgement has not been received, the Firm has advised the client that the Clients’ Money held in that account may not be protected as effectively as it would if held in a Bank in the United Kingdom or Ireland; and

the client has agreed in writing to the money being paid into, or remaining in, that Bank.

- (e) A Firm may not hold Clients' Money (or money which would, if held in a Bank (see Regulation 6) be Clients' Money) outside the European Union unless:
 - (i) the client is informed in writing of the country or territory where the account will be held; and
 - (ii) the client has agreed in writing to the money being paid into, or remaining in, the institution where the money is held; and
 - (iii) the client accepts in writing that where money is so held it will not have the protection afforded by these Regulations.

Payment into a Client Bank Account

- 9. Clients' Money or Mixed Monies received by a Firm or by any Principal must be paid immediately into a Client Bank Account, or to the client.
- 10. A Firm must only pay money into a Client Bank Account, if:
 - (a) the Firm is required to make such payment under these Regulations; or
 - (b) the money is the Firm's own money and:
 - (i) it is required to be so paid for the purpose of opening and maintaining the account and the amount is the minimum amount required for that purpose; or
 - (ii) it is so paid in order to restore in whole or in part any money paid out of the account in contravention of these Regulations.
- 11. A Firm shall not be regarded as having breached Regulations 9 and 10 simply because it transpires that money which the Firm paid into a Client Bank Account in the reasonable belief that it was required so to do under these Regulations should not have been paid into such an account, provided that immediately upon discovering the error the Firm takes the necessary steps to withdraw the money which has been paid into such account in error.
- 12. Where money of any one client in excess of £10,000 is held or is expected to be held by the Firm for more than 30 days, the money must be paid into a Client Bank Account designated by the name of the client or by a number or letters allocated to that account.

[Note: The Client Bank Account in this Regulation must be a separate account, rather than a memorandum account in the Firm's books. In other words, the account will be for that client (or clients acting jointly) only.]

Interest

- 13. Subject to Regulations 14 and 15, a Firm must:
 - (a) place Clients' Money in an interest-bearing account unless the interest earned would not be material (see Explanatory Note 4 below); and
 - (b) ensure that a fair rate of interest (see Explanatory Note 4 below) on the money is earned; and

- (c) ensure that all interest earned is paid or credited to the client, or as the client instructs in writing.
- 14. Regulation 13 shall not apply to Clients' Money held by a Firm as stakeholder though a Firm may not itself earn interest on it unless Regulation 15 applies.
- 15. The Firm and the client may agree in writing different arrangements for the payment of interest on Clients' Money held. This agreement may be in the engagement letter with the client.
- 16. It shall be a breach of these Regulations if a Firm fails to comply with any of the terms of any such agreement as is referred to in Regulation 15.
- 17. For the purposes of Regulations 13 to 16 Clients' Money held by a Firm for two or more clients acting together in one or more transactions must be treated as though held for a single client.

Withdrawal from a Client Bank Account

- 18. When a cheque or draft including money which is not Clients' Money is paid into a Client Bank Account the money which is not Clients' Money must be withdrawn as soon as the cheque or draft is cleared.
- 19. A Firm may withdraw from a Client Bank Account:
 - (a) (i) money, not being Clients' Money, paid into a Client Bank Account for the purpose of opening or maintaining the account; or
 - (ii) Mixed Monies which are not Clients' Money;
 - (b) money paid into a Client Bank Account contrary to these Regulations or which would have been so but for Regulation 11;
 - (c) money required to be withdrawn under Regulation 18;
 - (d) interest which the client has agreed in writing should not be paid to him (see Regulation 15);
 - (e) money properly required for a payment to a client or, with the written authority of that client, on his behalf;
 - (f) money properly required for or towards payment of a debt due to the Firm from a client otherwise than in respect of fees earned by the Firm;
 - (g) money withdrawn in accordance with Regulation 21, for or towards payment of fees payable to the Firm by the client;
 - (h) money drawn on a client's authority or in conformity with any contract between the Firm and the client;
 - (i) money which may be properly transferred into another Client Bank Account or into a bank account in the name of an individual client or clients acting jointly (see Regulation 17).

Any withdrawal from a Client Bank Account may only be made where a specific authority in respect of that withdrawal has been signed by a Principal of the Firm.

- 20. The Firm must ensure that at all times the sum of the credit balances held for all clients is at least equal to the total balance held in all Client Bank Accounts and that no amount may be withdrawn from the bank account for any client which is greater than the credit balance held for that client.

21. Money may only be withdrawn from a Client Bank Account for or towards payment of fees payable by the client to the Firm if:
 - (a) the precise amount thereof has been agreed by the client or has been finally determined by a court or arbiter; or
 - (b) the fees have been accurately calculated in accordance with a formula agreed in writing by the client on the basis of which the amount thereof can be determined; or
 - (c) thirty days have elapsed since the date of delivery to the client of a statement of fees and the client has not questioned the amount therein specified as due.
22. Monies which, in terms of Regulation 19, are payable to the Firm, shall be withdrawn as soon as reasonably practicable.

Records and Reconciliation

23. A Firm must keep Clients' Money records (including the notice and acknowledgement under Regulation 8(b)) which show:
 - (a) details of all money paid into and out of all Client Bank Accounts;
 - (b) entries of all Clients' Money paid direct to the client, or, on the client's instructions, paid to a third party, identifying that person;
 - (c) entries of all cheques received and endorsed over by the Firm to the client or, on the client's instruction, endorsed over to a third party, identifying that person;
 - (d) entries of all electronic transfers received or made of money and transferred direct to the client or, on the client's instructions, transferred to a third party, identifying that person; and
 - (e) details of all transactions on each client's ledger account which will easily identify the balance held for each client and which will reconcile to the total of Clients' Money held in the Client Bank Accounts.
24. A Firm must:
 - (a) at least once every five weeks, reconcile the total balances on all its Client Bank Accounts with the total corresponding credit balances in respect of its clients, as recorded by it, and where any difference arises, correct it immediately; and
 - (b) at the same time as carrying out the reconciliation under sub-paragraph (a) above, reconcile the balance on each Client Bank Account, as recorded by it, with the balance on that account as set out in the statement issued by the Bank and, where any difference arises, correct it immediately, unless the difference arises solely as a result of timing differences.
25. Records kept in accordance with Regulations 23, 24 and 26(a) shall be preserved for at least 6 years from the date on which they were made and the Firm shall hold them available for inspection.

Returns and Reports

26. Principals must:
 - (a) confirm annually, or as Council may from time to time determine, that their Firm meets the requirements of these Regulations and shall supply such evidence as these Regulations and/or Council may require to support such confirmation; and

- (b) ensure that their Firm conducts a review at least annually, to consider whether systems it has maintained have been adequate to enable it:
 - (i) to comply with these Regulations; and
 - (ii) to carry out the reconciliations in accordance with Regulation 24; and
 - (iii) to prepare returns required under Regulation 26(a);and to confirm its compliance with these Regulations.

Where possible the review should be conducted by a Principal who is not involved in the handling of Clients' Money.

Significant breaches of these Regulations require to be reported by the Firm to the Institute or its nominee.

- 27. To enable it to ascertain whether or not these Regulations are being complied with, the Council, or its nominee, at its discretion, may:
 - (a) inspect the books and records of the Firm or any of its Principals. Notice given by the Council or its nominee to the Firm or any of its Principals shall be signed by the Chief Executive and Secretary, or his nominee; or
 - (b) on such terms and conditions as it thinks fit, require the Firm to provide an Independent Accountant's Report.

The Responsibility of a Principal

- 28. Every Principal shall be responsible for any breach of these Regulations on the part of his Firm unless he proves that responsibility for the breach was entirely that of another Principal or Principals.
- 29. Where as a result of any disciplinary proceedings which may arise out of a breach of these Regulations a Firm is ordered to pay a fine, monetary penalty or costs, all Principals of the Firm shall be jointly and severally liable for the payment thereof and Regulation 28 shall have no application to such liability.
- 30. (a) A Firm which is a sole practitioner may not receive or hold Clients' Money unless it has certified in writing to the Council or its nominee that adequate arrangements are in place with:
 - (i) another Firm or a member of one of the professional bodies comprising the Consultative Committee of Accountancy Bodies (CCAB); and
 - (ii) the Bank operating the Client Bank Accountto enable the proper distribution or processing of Clients' Money held by the Firm, with a minimum of disruption, in the event of the incapacity or death of the sole practitioner.
- (b) All Firms holding Clients' Money at the date of coming into force of these Regulations must inform the Council or its nominee in writing of the arrangements in place under paragraph (a) above within three months (see Regulation 1). Otherwise, notification of such arrangements must be made in writing before or immediately following the first receipt of Clients' Money by the Firm, and immediately following any change (including cancellation) in the arrangement.

Unidentified and Untraced Clients

31. Where the ownership of Clients' Money cannot, for whatever reason, be attributed to identifiable clients or their representatives, or cannot be sent to them because their whereabouts are unknown the money must be retained on deposit for the benefit of those clients. The Queen's and Lord Treasurer's Remembrancer, 25 Chambers Street, Edinburgh (or the equivalent in other jurisdictions) may, in certain circumstances where it can be shown that the clients' money has no owner (rather than the owner cannot be traced) be willing to accept such money. No monies should be sent to the Queen's and Lord Treasurer's Remembrancer until he has agreed to accept it.

Explanatory Notes

(These notes do not form part of the Regulations)

1. For convenience only, these Regulations have been drafted in terms of the duties imposed on Firms. However, disciplinary proceedings can be brought against members, Regulated Non-Members or Firms under Regulation 28 and attention is drawn to that Regulation.
2. Money held by a Firm as stakeholder is governed by these Regulations (Regulation 3) but the payment of interest provisions do not apply (Regulation 14).
3. Unless the Firm agrees otherwise with a client (Regulation 15) a Client Bank Account must be an interest bearing account if "material interest" would be likely to be earned within the meaning of Regulation 13 and any interest thereby received, or which ought to have been received, shall in the absence of such agreement be paid to the client in accordance with Regulation 13.
4. The Firm is obliged to exercise reasonable skill and care in assessing whether or not interest would be material under Regulation 13. The Firm shall take all reasonable steps to ensure that a client does not lose material sums of interest because the Client Money is held on deposit in low or non-interest bearing accounts. As the Firm may be called upon to justify its decision, it is recommended that determinations of whether interest is considered to be material under Regulation 13 be periodically recorded.
5. Interest on Clients' Money received by way of cheque should be calculated either from the day it is received or cleared. Both payments and withdrawals must be treated in the same way. If the Firm chooses to credit interest from the date the cheque is cleared, and wants to include interest in a payment to a client, it should assume that the cheque will clear on the fifth business day after the cheque is sent to the client.
6. Whereas these Regulations govern the treatment and withdrawal of fees from monies held in a Client Bank Account, they do not relate to commissions received by the Firm. In this respect, the attention of members is drawn to Statement 4 (ICAS) of the Guide to Professional Ethics (and any amendments thereto).
7. Having regard to the requirements of opening a Client Bank Account in Regulation 8, Firms should have regard to the obligations on them in terms of the Money Laundering Regulations 1994.
8. Members are reminded to consider any income tax implications relating to interest received and paid on Client Bank Accounts.



CA House • 21 Haymarket Yards • Edinburgh • EH12 5BH
Tel: 0131 347 0100
Email: regulation@icas.org.uk • Website: www.icas.org.uk