

CLIENTS' MONEY REGULATIONS

- 1 These Regulations are made by the Council of the Chartered Institute of Public Finance and Accountancy. They come into force on 15 December 2007.

Scope

- 2 These Regulations apply in relation to all Members in Public Practice in the United Kingdom the Channel Islands, the Isle of Man and the Republic of Ireland ('Members') as defined in the Institute's Practice Regulations. For the sake of clarity, these Regulations apply to sole practitioners, and to Members who are partners in practices, or directors of a company. All references to Members should be taken to apply equally to joint practices, or to companies. A Member must receive or hold Clients' Money only in accordance with these Regulations.

Where a Member is authorised by the Financial Services Authority, any monies received or held which are Investment Business Clients' Money as defined by the Financial Services Authority's Handbook must be dealt with in accordance with that Handbook, which takes precedence over the requirements of 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 Member holds or receives for or from a client, including money held by a Member as stakeholder, and which is not immediately due and payable on demand to the Member for his own account. Clients' Money must be held in the currency in which it was received unless the client instructs otherwise in writing.
- 4 Where a Member has a power of control over the client's own account, though not meeting the definition of Clients' Money, the Member must ensure that he has the specific written authority of the client acknowledged by the Bank before exercising that authority, and he 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. A cheque or draft received by a Member, which is drawn in favour of a client or third party, does not constitute Clients' Money.

Interpretation

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

'**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) a person who has permission under part 4 of the Financial Services and Markets Act to accept deposits; 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 Coordination 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 Banking Supervision (Bailiwick of Guernsey) Law 1994;
 - (ii) a bank on the Island of Jersey including a registered person under the Banking Business (Jersey) Law 1991;
 - (iii) a bank on the Isle of Man including a bank which is licensed under the Isle of Man Banking Act 1998.

'Client Bank Account' is an account at a Bank in the name of the Member separate from other accounts of the Member 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.

'Council' means the Council of the Institute, or any Committee, entity or individual delegated by Council to exercise any powers or discharge any functions on its behalf.

'Mixed Monies' means monies received (whether in the form of cash, cheque, draft or electronic transfer) or held by a Member in terms of Regulation 9 which comprises or includes Clients' Money and money due to the Member.

(Note: for any Member authorised by the Financial Services Authority, any monies so received or held which include an element of Investment Business Clients' Money, as defined by the Financial Services Authority's Handbook, must be dealt with in accordance with the Handbook.)

'Notice' means written notice sent by first-class pre-paid recorded delivery to a Member's place of business or given in person by the Council (or its nominee) to any Member.

- 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.

Client identification

- 8** Before holding any Clients' Money on behalf of a Client the Member must first verify the identity of the Client. (See Explanatory Note 8 below.)

Opening a Client Bank Account

- 9 (a)** Subject to Regulation 11 hereof, a Member who receives or holds Clients' Money or Mixed Monies or money which under Regulation 11 hereof the Member is required to pay into a client account, must immediately open one or more Client Bank Accounts. Any Member 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 Member must notify the Bank in writing that:
- (i) all money standing to the credit of that account is held by the Member as Clients' Money and that the Bank is not entitled to combine the account with any other

- account or exercise any right to set off or counterclaim against money in that account in respect of any money owed to it on any other account of the Member;
- (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 Member; 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 Member sending the notice, the Member 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 Member 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 9(b)(iv), or where the Bank's acknowledgement has not been received, the Member 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
 - (iii) the client has agreed in writing to the money being paid into, or remaining in, that Bank.
- (e) A Member 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

- 10** Clients' Money or Mixed Monies received by a Member must be paid immediately into a Client Bank Account, or to the client.
- 11** A Member must only pay money into a Client Bank Account, if:
- (a) the Member is required to make such payment under these Regulations; or
 - (b) the money is the Member'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.

- 12** A Member shall not be regarded as having breached Regulations 10 and 11 simply because it transpires that money which the Member 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 Member takes the necessary steps to withdraw the money which has been paid into such account in error.
- 13** Where money of any one client in excess of £10,000 is held or is expected to be held by the Member 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 Member's books. In other words, the account will be for that client (or clients acting jointly) only.)

Interest

14 Subject to Regulations 15 and 16, a Member must:

- (a) place Clients' Money in an interest-bearing account unless the interest earned would not be material (see Explanatory Note 5 below); and
 - (b) ensure that a fair rate of interest (see Explanatory Note 5 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.
- 15** Regulation 14 shall not apply to Clients' Money held by a Member as stakeholder though a Member may not itself earn interest on it unless Regulation 16 applies.
- 16** The Member 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.
- 17** It shall be a breach of these Regulations if a Member fails to comply with any of the terms of any such agreement as is referred to in Regulation 16.
- 18** For the purposes of Regulations 14 to 17 Clients' Money held by a Member for two or more clients acting together in one or more transaction must be treated as though held for a single client.

Withdrawal from a Client Bank Account

- 19** 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.
- 20** A Member 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) the element of 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 12;
- (c) money required to be withdrawn under Regulation 19;
- (d) interest which the client has agreed in writing should not be paid to him (see Regulation 16);
- (e) money properly required for a payment to a client;
- (f) money properly required for or towards payment of a debt due to the Member from a client otherwise than in respect of fees earned by the Member;
- (g) money withdrawn in accordance with Regulation 22, for or towards payment of fees payable to the Member by the client;
- (h) money drawn on a client's written authority or in conformity with any written contract between the Member 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 18).

Members should agree with the client on whose authority any withdrawal from the Client Bank Account may be made. In particular, any authority delegated by the Member to another person, including another partner in his practice, or an employee, must be given in writing and be signed by the Member.

- 21** The Member 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.
- 22** Money may only be withdrawn from a Client Bank Account for or towards payment of fees payable by the client to the Member 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.
- 23** Monies which, in terms of Regulation 20, are payable to the Member, shall be withdrawn as soon as reasonably practicable.

Records and Reconciliation

- 24** A Member must keep Clients' Money records (including the notice and acknowledgement under Regulation 9(b)(iv)) 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 Member 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.

25 A Member must:

- (a) at least once every five weeks, reconcile the total balances on all Client Bank Accounts with the total corresponding credit balances in respect of Clients, as recorded by him, 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 him, 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.

26 Records kept in accordance with Regulations 24, 25 and 27(a) shall be preserved for at least 6 years from the date on which they were made and the Member shall hold them available for inspection.

Returns and Reports

27 Members must:

- (a) confirm annually through the Institute's Practice Assurance Annual Return that they meet the requirements of these Regulations and shall supply such evidence as these Regulations and/or Council may require to support such confirmation; and
- (b) review at least annually whether systems that they have maintained have been adequate to enable them:
 - (i) to comply with these Regulations;
 - (ii) to carry out the reconciliations in accordance with Regulation 25; and
 - (iii) to prepare any return required under Regulation 27(a) and to confirm its compliance with these Regulations;

Except in the case of a sole practice, the review should be conducted by a partner who is not involved in the handling of Clients' Money.

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

28 To enable Council to ascertain whether or not these Regulations are being complied with Council may appoint a person or persons to inspect the books and records of the Member. Notice given by Council or on behalf of Council shall be signed by the Chief Executive, or his nominee and it shall be the responsibility of the Member to make books and records available for inspection in accordance with such a Notice.

The Responsibility of a Member in respect of breaches of these Regulations

- 29** Every Member shall be responsible for any breach of these Regulations on the part of his practice unless he proves that responsibility for the breach was entirely that of another person.
- 30** Where as a result of any disciplinary proceedings which may arise out of a breach of these Regulations a Member is ordered to pay a fine, monetary penalty or costs, he shall be solely responsible for the payment.
- 31** A sole practitioner may not receive or hold Clients' Money unless he has arrangements with another appropriately qualified Member or an appropriate arrangement with a holder of a Practising Certificate issued by another member body of the Consultative Committee of Accountancy Bodies, or the Association of Accounting Technicians, or the Law Society to enable the proper distribution or processing of Clients' Money held by the Member in the event of the incapacity or death of the sole practitioner. All such Members holding Clients' Money at the date of coming into force of these Regulations (see Regulation 1) must inform Council or its nominee in writing of these arrangements within three months. Otherwise, notification of such arrangements must be made in writing before or immediately following the first receipt of Clients' Money by the Member, and immediately following any change (including cancellation) in the arrangement. (See Explanatory Note 10 below.)

Unidentified and Untraced Clients

- 32** Where the ownership of Clients' Monies 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.

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 Members. However, these Regulations apply to sole practitioners, and to Members who are partners in practices, or directors of a company. All references to Members should be taken to apply equally to joint practices, or to companies.
- 2 A cheque or draft which is not Clients' Money shall be forwarded to the payee or dealt with in accordance with the client's written instructions. (See definition of Clients' Money.)
- 3 Money held by a Member as stakeholder is governed by these Regulations (Regulation 3) but the payment of interest provisions do not apply (Regulation 15).
- 4 Unless the Member agrees otherwise with a client (Regulation 16) a Client Bank Account must be an interest bearing account if 'material interest' would be likely to be earned within the meaning of Regulation 14 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 14.
- 5 Interest would be material under Regulation 14 if the money is likely to be held for at least the number of weeks shown in the left hand column of the following table and the minimum credit balance of the client equals or is more than the sum in the right hand column (see Regulation 18 for 'aggregated' Clients' Money).

Number of Weeks	Minimum Balance
8	£1,000
4	£2,000
2	£10,000
1	£20,000

This is merely a guide. The obligation of the Member is to take reasonable steps to ensure that the client does not lose material sums of interest because the money remains in low or non-interest bearing accounts. There may be circumstances, for example, where money should be placed on overnight deposit.

The fair rate of interest earned must be at least the minimum deposit rate offered publicly by a Bank for small deposits.

- 6 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 Member chooses to credit interest from the date the cheque is cleared, and wants to include interest in a payment to a client, he should assume that the cheque will clear on the fifth business day after the cheque is sent to the client.
- 7 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 Member. In this respect, the attention of Members is drawn to 'Conflicts of interest and confidential information' in Section 220 in the Institute's SoPP on Ethics.
- 8 The Fédération des Experts Comptables Européens, of which the Institute is a member, is a signatory to the EU's 'Charter for the European Professional Associations in support of the fight against organised crime'. To comply with the obligations under the Charter, Members should verify the identity of a client before any money is held on behalf of that client.

To avoid potential embarrassment, it is suggested that Members verify a client's identity when a professional relationship is first established, rather than later when any client's money may be first received.

Members are advised that converting or concealing criminal property or terrorist funds, for example by allowing them to be passed through the clients' money account, is a criminal offence under the money laundering legislation. However, the offence is not committed if a prompt report is made to the law enforcement authorities and their permission obtained to continue the transaction.

Where client money is held for the first time after the implementation date of these regulations on behalf of an entity who was already a client at that date, the Member should consider carefully whether there is sufficient evidence of the client's identity through the course of past dealings.

It is a requirement of the Money Laundering Regulations that the Member should verify the identity of all new clients which would then deal with the identification requirements outlined above.

- 9 Members are reminded to consider any income tax implications relating to interest received and paid on Client Bank Accounts.
- 10 Sole practitioners are required by Regulation 31 to have an arrangement with another person to provide the clients with access to their money held by the Member in the event of the incapacity or death of the sole practitioner. The Regulation details when these arrangements have to be in place. The arrangement could most easily be with another Member with whom the sole practitioner already has an alternate or consultation arrangement.

The sole practitioner needs to be convinced of the integrity of the proposed alternate and that the alternate understands the Client Money Regulations and what the alternate may be required to do. If you are unsure about the suitability of a particular person for this role, contact practiceassurance@cipfa.org for assistance.

Whoever is chosen, it would be best practice to inform clients of the identity of this person.

- 12 Regulation 20 sets out the various circumstances in which money can be withdrawn from a Client Bank Account. It requires any delegation of such withdrawals to be subject to written authorisation by the Member. The extent of the delegation must be recorded in this written delegation, which should also detail any restrictions on the use of this delegated authority.

In deciding who can have this authority, the Member should consider the trust that is being placed in the individual and his ability to carry out this function with due care and integrity.

Members should note that they are responsible for compliance with the Clients' Money Regulations, regardless of any delegation that may have been made. Regulation 27 requires regular review of compliance with the Regulations and this review should include the operation of any delegated powers.