



Clients' Money Regulations

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Clients' Money Regulations

1. These regulations are made by the *Council* of the Institute of Chartered Accountants in England and Wales (ICAEW), pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They first came into force on 1 January 2004. The regulations dated 1 April 1992 remain applicable after this date only in respect of actions or omissions or acts prior to the coming into force of these regulations.

Scope

2. These regulations apply in relation to all UK and Ireland offices of *firms* and, subject to regulation 29, to the *principals* of such *firms*. a *firm* must receive or hold *clients' money* only in accordance with these regulations. Where a *firm* is authorised by the Financial Conduct Authority (FCA), any monies received or held which are investment business *clients' money* as defined by the FCA 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 *firm* holds or receives for or from a client, including 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 in writing.
4. Where a *firm* has a power or control over the clients own 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. a cheque or draft received by a *firm*, 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 UK 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 UK 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 UK 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 *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.

Council means the *Council* of ICAEW, or any committee, entity or individual delegated by *Council* to exercise any powers or discharge any functions on its behalf.

Firm means a sole practitioner who is a member, or a partnership, or a body corporate or a limited liability partnership comprised in whole or in part of members, the business of whom or of which includes carrying on the profession of accountancy.

Independent Accountant's Report is a report, (in such form as the *Council* shall from time-to-time determine) covering such period as the *Council* or its nominee may require, to the Chief Executive or his nominee, required in terms of Regulation 28(b) and 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 27;
- 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 2006 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 on Independence - assurance engagements in Section 290 in the Code of Ethics.

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 9 which comprises or includes *clients' money* and money due to the *firm*.

(Note: for any *firms* authorised by the FCA, any monies so received or held which include an element of investment business *clients' money*, as defined by the FCA 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*.

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 or who is a member of a limited liability partnership.

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 *firm* must first verify the identity of the client. (See Explanatory Note 8 below.)
- 8A. A *client bank account* should only be used for receiving or making payments which relate to accountancy services which the *firm* is performing, has performed or has been engaged to perform, for the client. the *firm* must take steps to obtain and hold sufficient information to ensure that the *client bank account* is being used for a lawful and legitimate purpose and for bona fide transactions.

Opening a client bank account

9.
 - a. Subject to Regulation 11 hereof, a *firm* which receives or holds *clients' money* or *mixed monies* or money which under Regulation 11 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 standing to the credit of that account is held by the *firm* 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 *firms*;
 - 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 UK 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 UK 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 *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 UK or Ireland; and
 - iii. 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
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 *firm* or by any *principal* must be paid immediately into a *client bank account*, or to the client.
11. 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.
12. A *firm* shall not be regarded as having breached Regulations 10 and 11 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.
13. 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

14. Subject to Regulations 15 and 16, a *firm* 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 *firm* as stakeholder though a *firm* may not itself earn interest on it unless Regulation 16 applies.
16. 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.
17. 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 16.
18. For the purposes of Regulations 14 to 17 *clients' money* held by a *firm* 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 *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. 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 *firm* from a client otherwise than in respect of fees earned by the *firm*;
 - g. money withdrawn in accordance with Regulation 22, for or towards payment of fees payable to the *firm* by the client;
 - h. money drawn on a clients' written authority or in conformity with any written 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 18);
 - j. money withdrawn and paid to a registered charity in accordance with Regulation 32 or 33.

Any withdrawal from a *client bank account* may only be made where an authority in respect of that withdrawal has been signed by a *principal* of the *firm* or by an employee of the *firm* to whom authority in writing has been delegated from the *principals* of the *firm*. (See Explanatory Note 12 below.)

- 20A *Clients' money* must be returned to the client promptly as soon as there is no longer any reason to retain those funds.
21. 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.
22. Money may only be withdrawn from a *client bank account* for or towards payment of fees payable by the client to the *firm* if:
- the precise amount thereof has been agreed by the client or has been finally determined by a court or arbiter; or
 - 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
 - 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 *firm*, shall be withdrawn as soon as reasonably practicable.

Records and reconciliation

24. A *firm* must keep *clients' money* records (including the *notice* and acknowledgement under Regulation 9(b)(iv)) which show:
- details of all money paid into and out of all *client bank accounts*;
 - entries of all *clients' money* paid direct to the client, or, on the clients instructions, paid to a third party, identifying that person;
 - entries of all cheques received and endorsed over by the *firm* to the client or, on the clients instruction, endorsed over to a third party, identifying that person;
 - entries of all electronic transfers received or made of money and transferred direct to the client or, on the clients instructions, transferred to a third party, identifying that person; and
 - details of all transactions on each clients' 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*.
 - details of all unclaimed monies withdrawn from the *client bank account* in accordance with Regulation 32 or 33, including the name and contact details of the recipient of those monies.
25. A *firm* must:
- 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
 - 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.

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 *firm* shall hold them available for inspection.

Returns and reports

27. *Principals* must:
- a. confirm 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;
 - 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.

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 ICAEW or its nominee.

28. To enable *Council* to ascertain whether or not these regulations are being complied with, it:
- a. may appoint a person or persons to inspect the books and records of the *firm* or any of its *principals*. Notice given by *Council* or on behalf of *Council*, the *firm* or any of its *principals* shall be signed by the Chief Executive, or his nominee; or
 - b. may require the *firm* to provide an *Independent Accountant's Report*;

and it shall be the responsibility of the *firm* and its *principals* to make books and records available for inspection in accordance with such a *notice* and to provide an *Independent Accountant's Report* in accordance with such a requirement.

The responsibility of a principal

29. 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*.
30. 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 29 shall have no application to such liability.
31. A *firm* (which term includes a sole practitioner) which is wholly owned and/or controlled, whether directly or indirectly, by a single member may not receive or hold *clients' money* unless it has arrangements with another appropriately qualified *firm* or person to enable the proper distribution or processing of *clients' money* held by the *firm* in the event of the incapacity or death of the member. Notification of such arrangements must be made in writing before or immediately following the first receipt of *clients' money* by the *firm*, or

notified via the *firm's* next annual return to ICAEW and immediately following any change (including cancellation) in the arrangement. (See Explanatory Note 10 below.)

Unidentified and untraced clients

32. A *firm* may cease to treat as client monies, any monies, when after taking reasonable steps to trace the client and return the monies, those monies remain unclaimed. (Guidance on 'reasonable steps' is included in Explanatory Note 13). Such monies must then be paid by the member to a registered charity, subject to the following conditions:
- a. The client must have remained untraced for 5 years.
 - b. Sums of below £10,000 (per client) may be paid to any registered charity.
 - c. For sums of £10,000 and above (per client), the registered charity must provide an indemnity against any claim subsequently made by the client for the money.
33. a. Where a *firm* is ceasing to practise, payment of any unclaimed *clients' money* to a registered charity must be on the following terms:
- i. That the registered charity provides an indemnity for all sums paid whatever the amount.
 - ii. There is no requirement for the client to have remained untraced for 5 years.
- b. On cessation the *firm* must inform the Institute in writing of all sums paid to a registered charity in accordance with this regulation. The information to be provided must include:
- i. the clients name and last known contact details, and
 - ii. the sum paid, and
 - iii. the name and contact details of the recipient registered charity.
- For the purposes of this regulation, ceasing to practise does not include any arrangement whereby a *firm* succeeds to the business of another.
34. Any sums not paid to a registered charity in accordance with Regulation 32 or 33 must be retained on deposit for the benefit of the unidentified or untraced client.

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, affiliates or *firms* under Regulation 29 and attention is drawn to that regulation.
2. A cheque or draft which is not *clients' money* shall be forwarded to the payee or dealt with in accordance with the clients written instructions. (See definition of *clients' money*.)
3. Money held by a *firm* as stakeholder is governed by these regulations (Regulation 3) but the payment of interest provisions do not apply (Regulation 15).
4. Unless the *firm* 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 *firm* 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 *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.
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 *firm*. In this respect, the attention of members is drawn to Conflicts of interest and confidential information in Section 220 in the Code of Ethics.
8. The Fédération des Experts Comptables Européens, of which ICAEW is a member, is a signatory to the EUs Charter for the European Professional Associations in support of the fight against organised crime. To comply with the obligations under the charter, *firms* 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 *firms* verify a clients' identity when a professional relationship is first established, rather than later when any *clients' money* may be first received. Guidance on suitable procedures to verify a clients' identity can be found in anti-money laundering guidance.

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. More guidance on the recognition of

when this might be the case, and advice on reporting money laundering suspicions, is contained in *statement 9.5*.

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 *firm* should consider carefully if it has sufficient evidence of the clients identity through the course of past dealings.

It is now a requirement of the Money Laundering Regulations that *firms* 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. Regulation 31 requires *firms* which are directly or indirectly wholly owned or controlled by a single member to have an arrangement with another person to provide the clients with access to their money held by the *firm* in the event of the incapacity or death of that member. Such *firms* could be a limited company with a single director and no company secretary, or a LLP where one member is an individual and the other member is a company, and the individual is the sole director of that company. However, *firms* may adopt different structures but still be controlled by a single member and it is not possible for this guidance to outline every situation whereby an alternate will be required under Regulation 31. A *firm* which is a partnership of individuals but which only has a single equity partner would not need to make arrangements under Regulation 31 as other 'partners' are able to deal any client money held by the *firm*. The regulation details when these arrangements have to be in place. The arrangement could most easily be with another *firm* where there is already an alternate or consultation arrangement in place.

There is no requirement that this arrangement has to be with another chartered accountant, but when selecting an alternate, the member should consider:

- If the alternate is to be a firm, whether that firm is itself subject to similar client money requirements, such as a solicitor, or is otherwise capable of undertaking the task.
- If the alternate is to be an individual, whether he or she has the appropriate experience to deal with these responsibilities.

In either case, the member needs to be convinced of the integrity of the proposed alternate and that the alternate understands the Clients' 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 the Ethics Advisory Services' helpline for assistance. Whoever is chosen, it would be best practice to inform clients of the identity of this person.

There is a helpsheet on general alternate arrangements that can be adapted for the purposes of these regulations. Visit icaew.com/helpsheets and click on 'Practice helpsheets' for the helpsheet on alternate arrangements; click on 'Ethics helpsheets' for the helpsheet on clients' monies.

Details of the arrangements, and any changes, should be sent to the Professional Conduct Department, ICAEW, Metropolitan House, 321 Avebury Boulevard, Milton

Keynes, MK9 2FZ. Although there is no requirement to use it, there is a standard form on our website which forms part of the clients' money helpsheet and may be obtained as noted above.

11. Insolvency practitioners are reminded that these regulations apply when they receive money in pre-insolvency situations. If, subsequent to an insolvency appointment, monies are received as payable to the *firm*, it should either be endorsed over to the insolvency appointment or banked in a *clients' money* account and withdrawn as soon as the cheque clears.
12. Regulation 20 sets out the various circumstances in which money can be withdrawn from a *firms' client bank account*. It requires such withdrawals to be authorised by a *principal* or an employee of the *firm* provided that in the latter case the extent of the delegation from the *principals* is recorded in writing. The written delegation should also detail any restrictions on the use of this delegated authority.

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

The *principals* should note that they are responsible for the *firm's* compliance with the Clients' Money Regulations, regardless of any delegation that may have been made. Regulation 27 requires the *principals* to review the *firm's* compliance with the regulations and this review should include the operation of any delegated powers.

13. Regulation 32 enables *firms* to pay unclaimed *clients' money* to a registered charity. There is no requirement to do so - funds not paid to a registered charity must be retained on deposit for the benefit of the unidentified or untraced client in accordance with Regulation 34. Before any payment to a charity is made, reasonable steps to trace the client must have been taken. Any steps taken should be proportionate to the sums involved, but could include, writing to the client at their last known address, conducting searches of the electoral roll or at Companies House, advertising in a local newspaper and employing tracing agents. Obviously, more effort should be made to trace a missing client if the sums involved are material. The *firm* will remain liable to repay any monies paid to a registered charity.

There is no requirement to take steps to trace the client when a *firm* is ceasing to trade - see Regulation 33. The ICAEW Foundation icaew.com/foundation (a registered charity number 313983) has indicated that it will normally accept funds on an indemnity basis. The level of indemnity will depend on the sums paid and whether the *firm* has ceased to trade, see Regulations 32 and 33.

To avoid such a situation arising, it may be appropriate before accepting funds from clients to make a written arrangement with them should such circumstances arise. For example, the *firm* either in its engagement letter or on acceptance of the funds, could detail the means by which monies which subsequently become unclaimed would be dealt with.

14. Further guidance on Regulation 8A can be accessed <http://www.icaew.com/-/media/corporate/files/members/practice-centre/icaew-clients-money-regulation-8a-guidance.ashx?la=en>