



Clients' Money Regulation 8a - Guidance

REGULATION 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.

General principles

A firm's client bank account should not be used as a banking facility for clients. Deposits into and out of the account should have a connection to an accountancy service* being performed by the firm and principals should at all times consider and understand the purpose for which payments are received and made. There should be a good reason why the firm's client bank account is being used rather than the client's own account.

It is vital that principals remain vigilant to the risks posed by handling client money, and that they put in place systems to identify, assess and, if appropriate, document their response to risks. This is an ongoing obligation, both at the beginning and during the course of the engagement.

Firms have existing obligations under the Code of Ethics to act with integrity and objectivity when handling client money. They must also assess and address risks in accordance with the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002, including the risk that firms' client bank accounts could be targeted as a means of legitimising fraudulent scams and other unlawful practices. This is why it is important for firms to have a good understanding of the source of the funds and the nature of the transactions passing through the account as part of their anti-money laundering checks and systems.

Clarification of terms

To assist principals in understanding their obligations we have clarified the following terms contained in the regulation:

Accountancy services

Payments made into, and out of, the client bank account must relate either directly, or indirectly, to an accountancy service which the firm is performing for the client (or which it has performed for the client in the past or has been engaged to provide in the future). Such services would include, for example, outsourced payroll services and the drawing up of rental accounts.

*As defined from time to time in the ICAEW Statement on Engaging in Public Practice and including the activities listed in annex 1.

To comply with clients' money regulation 8A there must be a clear and fixed intention (evidenced for example in an engagement letter or other correspondence) that the firm will be performing a service for the client at some point in the engagement or transaction.

Hold sufficient information

A firm should be able to demonstrate through contemporaneous, written records that it understands the nature of the engagement and the reason for, and source and destination of, particular transactions. It should also be able to demonstrate through written evidence the steps it took, and the conclusions it reached, in identifying, evaluating and responding to any threats both prior to, and during, the engagement. The records should be sufficient to enable an objective, reasonable and informed third party to accept the appropriateness of the firm's actions.

Lawful

The payment of client monies into and out of the client bank account must have a 'lawful' purpose, ie, the transaction(s) must not contravene the law or legal regulations in force at the time of the transaction or engagement.

Legitimate and bona fide

A transaction is likely to have a legitimate purpose if it is an expected course of action and not artificial or contrived. The following may constitute 'red flags' which would require the firm to question and assess whether the client bank account is being used for a legitimate purpose and for bona fide transactions:

- unusual or unexpected transactions or instructions;
- large one-off transactions;
- funds deposited from an unknown source;
- instructions to transfer funds to an unknown payee;
- funds received from offshore and requests to make unusual payments offshore – particularly involving countries identified as high risk in HM Treasury's sanctions list;
- requests to use a client bank account from offshore clients or who have not been met;
- requests to transfer money which originated overseas to different individuals overseas;
- instructions from clients which do not fit with the firm's usual service provision;
- payments outside forecasts or budgets; or
- complaints from depositors regarding use of monies deposited into the client bank account.

Before receiving money or carrying out transactions on behalf of the client, members should understand the nature of, and reason for, each transaction in order to satisfy themselves that it is lawful and legitimate. This is in addition to the 'know your client' checks and ongoing client due diligence obligations which are required to comply with anti-money laundering legislation. All steps carried out by the firm to assess risk should be appropriately documented.

It is essential that members consider whether there is a risk that either the main reason, or one of the main reasons, that the firm's involvement in the transactions is being procured is to lend credibility or assurance to depositors or third parties by establishing a UK location.

The obligation on the firm to satisfy itself that the client bank account is being used for a legitimate purpose, and for bona fide transactions, applies both prior to, and during, the course of the engagement. The ongoing nature of the duty requires firms to have systems and controls in place to identify and respond to risks on an ongoing basis. In cases where a risk is identified a firm may

need to demonstrate that it has assessed and responded appropriately to the threat before proceeding.

The measures that a firm should have in place to evaluate and control risk will depend on factors such as whether the firm has worked with the client before, whether the client is based in the UK or offshore, and the nature and scope of the transaction or engagement.

It is not expected that a firm's principals would review and approve each transaction passing through the client bank account on an ongoing or daily basis. It would be sufficient for the principal with responsibility for the engagement to have a good understanding of the client and the nature of the expected transaction(s) at the beginning of the engagement. This knowledge would then need to be communicated to more junior members of staff with oversight of the day to day running of the client bank account. Staff would need to have sufficient training to identify risks and refer matters up to more senior members of staff for action as required.¹

In developing their controls and systems to respond to risk, it is recommended that firms refer to existing **CCAB guidance** on anti-money laundering and counter-terrorism financing obligations.

Offshore clients

There may be legitimate reasons why a firm may be requested to hold money on a temporary basis and / or to carry out transactions through its client bank account for an individual or corporate client, based offshore, who or which is experiencing delays in opening up a UK bank account. If the funds relate to services which the firm has performed, is performing currently or which it has been engaged to perform in the future, and the transaction is assessed as having a legitimate purpose, then this would not in itself contravene clients' money regulation 8A.

However, firms should exercise caution in these circumstances, particularly where the client is a new client and/or where there has been no prior meeting between one of the firm's principals and the client (if an individual) or a director of the client (if a corporate entity). In accordance with **CCAB guidance**, the firm will need to exercise enhanced due diligence in identifying the client at the beginning of the engagement. Further, the fact that the client has been (as yet) unable to open a bank account in the UK should be a key factor that the firm will need to take into account in determining whether to proceed with the engagement. If the client has been unable to open its own bank account to conduct its own transactions within 3 months then the firm should terminate the engagement and return the monies to the client unless the firm is provided with good reasons why there has been a delay in opening a bank account. If the firm elects to proceed, it will need to satisfy itself as to the reasons for the delay and ensure that it holds sufficient records of the investigation it has undertaken and the reasons for its decision.

Case scenarios

The following scenarios are intended to illustrate how compliance with the new regulation will work in practice. While the comments section indicates how each scenario is likely to be viewed by ICAEW, each case would be considered on its merits.

¹ However firms should have regard to Clients' Money Regulation 20 which requires withdrawals from the client bank account to be authorised by a principal of the firm or by an employee of the firm to whom authority to authorise withdrawals has been delegated in writing. In accordance with Clients' Money Regulation 27(b) firms must also conduct a review, at least annually, to ensure that the systems they have in place are adequate to ensure compliance with the Clients' Money Regulations.

	Facts	Comments
1.	<p>Firm A acts for a number of well-known clients in the music industry. It agrees to assist a longstanding client in dealing with financial arrangements associated with a tour (e.g. paying the cost of venues and equipment and collecting royalties). All transactions pass through the firm's client bank account. The firm has also been formally engaged to provide ancillary accounting services e.g. preparing tour accounts and tax returns, and liaising with HMRC.</p>	<p>These arrangements would not contravene Clients' Money Regulation 8A. The payments made and received by the firm in connection with client tours relate to accountancy services which are being performed or will be performed at a later date. However, the firm would need to demonstrate that it has appropriate systems and controls in place that enable it to know the purpose of the transactions going into and out of the account (including the identity of the makers or recipients of payments) and to highlight any unusual payments or receipts.</p>
2.	<p>Firm B agrees to act for a high net worth individual by managing their client's country estate, receiving money and paying various debts.</p>	<p>This arrangement will contravene clients' money regulation 8A unless the firm is clearly instructed, at the beginning of the engagement, to carry out a related accountancy service such as the drawing up of estate accounts at the end of the period or preparing the client's tax return.</p>
3.	<p>Firm C is approached by an offshore client which intends to start exporting machinery to the UK. Firm C is requested to assist with the client's new venture by:</p> <ul style="list-style-type: none"> • receiving payments from new UK customers and discharging payments to new UK suppliers pending the establishment by the client of a UK bank account; and • allowing its new client to install a dedicated telephone line in its office, pending the client setting up its own office in the UK. <p>The client indicates that any assistance which Firm C provides will result in the client deciding to instruct Firm C to carry out all of its future UK accountancy work.</p>	<p>This arrangement would contravene regulation 8A as there is no definite accountancy service which Firm C has been engaged to provide to its new client.</p> <p>Even if its new client engages Firm C to provide an accountancy service directly or indirectly linked to the transactions, the arrangement may still be contrary to Clients' Money Regulation 8A if there is a risk that Firm C's involvement is to lend assurance and credibility to its new client's new activity in the UK.</p> <p>If the firm decides that it can act for the firm, it would need to put in place a process to review transactions being conducted through the client bank account and to highlight any unusual or unexpected transactions to the firm's principals. It would also have to close the client bank account after three months if the new client has been unable to establish its own UK bank account and there is no plausible explanation provided for the delay in doing so.</p>

		In addition, as the client is based offshore, Firm C might need to apply enhanced due diligence before accepting the client's instructions and proceeding with the engagement.
4.	Firm D provides an outsourced payroll function to a small number of clients. It uses client bank accounts for this purpose.	<p>This arrangement would not contravene clients' money regulation 8A. Payments received into, and made out of, the client bank account relate to an accountancy service the firm is providing (i.e. outsourced payroll services) and are likely to be for a lawful and legitimate purpose.</p> <p>However, it may be more appropriate to make the payments direct from the clients' own account for this purpose. See Payments from a client's own account helpsheet.</p>
5.	Firm E is engaged by an existing corporate client to provide accounts preparation and tax compliance work. The client is involved in marketing high risk investment opportunities to the public and asks the firm to receive payments made by the public. The client confirms in its marketing literature that funds should be deposited into Firm E's client bank account.	Although this is an existing client, Firm E should be cautious about agreeing to have its client bank account used for this purpose. Firm E would need to demonstrate that the transactions are lawful and that there's a legitimate and logical reason why the client wishes for payments to pass through the firm's client bank account rather than its own bank account. The firm should be alert to the risk that the client may wish for Firm E's client bank account to be used in order to attempt to legitimise otherwise fraudulent activity.

For further information on the issues raised in this guidance, and technical, ethical and anti-money laundering issues generally, please contact the Technical Advisory Service on +44 (0)1908 248 250.