

Desktop Review - Client money regulations

Introduction

APESB Technical Staff have performed a desktop review to gather information on requirements on client monies that accountants are to comply with. Technical staff have considered the requirements in two countries – the United Kingdom (UK) and New Zealand. The respective body in each country has established standards and provides guidance regarding a member or firm's professional responsibilities when holding, receiving, or otherwise dealing with monies on behalf of clients:

1. New Zealand Institute of Chartered Accountants (NZICA); and
2. Institute of Chartered Accountants in England and Wales (ICAEW) – UK.

Details of the regulations related to operating client bank accounts to receive client's money are set below.

1. New Zealand Institute of Chartered Accountants

There have been requirements in New Zealand relating to Client Monies from at least 1995. PS-2 *Client Monies and Members' Trust Accounts* (PS-2) was first issued in June 1995, having formed part of the New Zealand Code of Ethics prior to that date. When the Council of the Institute of Chartered Accountants of New Zealand approved a reissued version of the Code of Ethics in June 2003, the section of the previous Code that contained these requirements were relocated to PS-2 without substantive change. PS-2 was also approved by the Council in June 2003.

PS 2 provides guidance regarding a member or firm's professional responsibilities when holding, receiving, or otherwise dealing with monies on behalf of clients, including the operation of client bank accounts in New Zealand.

Key definitions in the Standard include:

- **Client bank account** means a client's bank account held with a financial institution on which a member, acting either solely or in conjunction with any one or more persons who are personnel of or in the employ of the member or firm, holds a signing authority.

Examples of situations where members have signing authorities in respect of client bank accounts include where the client is overseas or on contract work in remote locations. Members may also be requested by clients to process transactions, such as payroll payments and payments to taxation authorities, through client bank accounts.

- **Trust Account** means an account or accounts established by a member or firm with a registered bank in New Zealand which are kept for the sole purpose of receiving and holding deposits of client monies and the withdrawal of client monies from the account.

Relevant paragraphs on Trust Account features:

- *Client monies received by the member or firm must be paid into a trust account of the member or firm until such money is paid either to the client, or otherwise as the client directs (paragraph 30).*

Agenda Item 9(f)

- *'Trust accounts must be established and maintained at a registered bank' (paragraph 31) and 'each trust account must be in the name of the member's firm and include the words "trust account" in its title. If directed by the client, the member or firm must establish and maintain a separate trust account for that client' (paragraph 32).*
- *On opening a trust account, a member or firm must give written notice to the registered bank concerned:*
 - a) *that all money standing to the credit of that account is held by the member or firm as client monies and that the bank is not entitled to combine the account with any other account or to exercise any right to set-off or counterclaim against money in that account in respect of any sum owed to it on any other account; and*
 - b) *that any interest payable in respect of the account balance must be credited to that account; and*
 - c) *requesting that the bank acknowledge in writing that it accepts the terms of the notice, and confirm the understanding that monies held in the trust account are client monies and the property of clients of the member or firm. (paragraph 33)*
- *Client monies must not be held in a trust account for any period longer than is reasonably necessary to discharge the purpose for which the client monies were held or received. (paragraph 34)*
- *The member or firm must inform the client of the bank at which the client's monies are held. The client must receive this information:*
 - a) *on initial deposit of a client's monies with the member or firm; and*
 - b) *with the statement provided to the client under paragraph 61 of this Standard; and*
 - c) *on a change in the bank where the client's monies are held. (paragraph 35)*

Relevant paragraphs on client bank accounts:

- *A member or firm operating a client bank account must ensure, in respect of each client bank account, that the client's specific written authority to operate the client's bank account is obtained, and acknowledged by the relevant financial institution, prior to exercising that authority. (paragraph 36)*

Relevant paragraphs on audits of client monies:

- *A member or firm must appoint an independent auditor to audit the member's activity in respect of client monies:*
 - a) *at the Institute's request within 10 working days of that request; or*
 - b) *for the purposes of paragraph 58(e).*

The auditor must be a member who is a Chartered Accountant and holds a Certificate of Public Practice. (Paragraph 69)

Paragraph 58(e) relates to the conditions that must be in place for a member or firm to apply client monies to loans or investments in an associated finance entity

- *The auditor undertaking the audit of a member or firm's activity in respect of client monies under paragraph 69 must express an opinion, in respect of the client monies and/or operation of client bank accounts, as to whether client monies and/or client bank accounts have been properly maintained, recorded and accounted for by the member or firm in compliance with this Standard. The audit opinion provided to the member or firm must also be forwarded to the Director of Practice Review of the Institute within 15 working days after completion of the audit. (paragraph 71)*

- *The period for and extent of audit required under paragraph 69(a) will be specified by the Institute as part of the Institute's request. The Institute may request an audit on receiving a complaint about the member or firm's handling of client monies or client bank accounts, or for any other reason which the Institute believes warrants requesting an audit. (paragraph A26)*

2. Institute of Chartered Accountants in England and Wales

The [ICAEW Clients' Money 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.

The current regulations 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.

The ICAEW regulation focus on client bank accounts rather than using the term trust account. The definition of "**client bank account**" in the regulations is:

***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.*

The regulations state that "...*(w)here 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.*" (paragraph 4)

Opening a client bank account

'...A firm which receives or holds clients' money or mixed monies or money which ... is required to ...[be paid] ... 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.' (paragraph 9a)

On opening a client bank account, a firm must notify the bank in writing that:

- 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;*
- interest payable on the money in the account must be credited to that account;*
- 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*
- the bank must acknowledge in writing that it accepts these terms.* (paragraph 9b)

Principals must:

- 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*

Agenda Item 9(f)

- 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. (paragraph 27)

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. (paragraph 28)

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