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# ICAS Clients' Money Regulations

The Institute of Chartered Accountants of Scotland

# Index

Council, in terms of Rules 8.1 and 11.11.2 of the ICAS Rules, hereby makes the following Regulations.

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## 1. General

### Citation and commencement

- 1.1 These Regulations may be cited as the ICAS Clients' Money Regulations and shall come into force on 1 January 2024.
- 1.2 In these Regulations words and phrases have the same meaning as in the ICAS Rules, and, unless the context requires otherwise, the meanings set out in Regulations 2 and 3.

## 2. Definition of Client's Money

- 2.1 **Clients' Money** – means any form of money, of any currency, which a Firm holds or receives, for, from or on behalf of a client.
- 2.2 The following shall be deemed to be included within the definition of Clients' Money:
  - 2.2.1 estate money held by an Insolvency Practitioner licensed by ICAS for the prevailing statutory purposes of an insolvency appointment;
  - 2.2.2 money which is held by a Firm as stakeholder, providing such money is not immediately due and payable on demand to the Insolvency Practitioner or to the Firm's own account.
- 2.3 The following shall not be regarded as Clients' Money:
  - 2.3.1 fees paid for professional work performed or agreed to be performed and clearly identifiable as such;
  - 2.3.2 any money received by a Firm, which is intended for payment to a client or third party.

## 3. General Definitions

- 3.1 A **Bank** means:
  - 3.1.1 if the account is opened at a branch in the United Kingdom:
    - (i) the Bank of England;
    - (ii) a firm with the relevant statutory permissions in the United Kingdom to carry on the regulated activity of accepting deposits and is a credit institution, but is not a credit union or *friendly society*;
    - (iii) a building society within the meaning of the Building Societies Act 1986, as amended from time to time, which has adopted the power to provide money transmission services and has not assumed any restriction on the extent of that power;
    - (iv) the Central Bank of a member state of either the European Economic Area or the OECD;
    - (v) a bank which is supervised by the central bank or other banking regulator of a member state of either the European Economic Area or the OECD; or
    - (vi) a bank which is a subsidiary or parent company of a bank which falls within the definitions in (i) to (iv) above.
  - 3.1.2 if the account is opened outside of the United Kingdom:
    - (i) a bank which falls within the definition of Regulation 3.1.1;
    - (ii) a bank which is regulated in the Isle of Man or the Channel Islands; or
    - (iii) a credit institution established in a member state of the Economic European Area or OECD, other than the United Kingdom, which is duly authorised by the relevant state regulator.

- 3.1.3 any other bank that:
- (i) is subject to regulation by a national banking regulator;
  - (ii) is required to provide audited accounts;
  - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has a surplus revenue over expenditure for the last two financial years; and
  - (iv) has an annual audit report which is not materially qualified.
- 3.2 A **Client Bank Account** is an account at a Bank which:
- 3.2.1 is separate from other accounts of the Firm;
  - 3.2.2 includes the word 'client' in its title, or has an account name clearly defining the insolvency estate to which it relates; and
  - 3.2.3 is 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 which identify a client.
- 3.3 A **Firm** means:
- 3.3.1 a Member who is engaged in practice as a sole practitioner, providing accountancy or related services;
  - 3.3.2 a body corporate, partnership, limited liability partnership or unincorporated practice, which contains one or more Members, and which provides accountancy or related services; or
  - 3.3.3 a Member or Affiliate who is licensed by ICAS as an Insolvency Practitioner.
- 3.4 An **Independent Accountant's Report** means a report which Council may instruct a Firm to provide to enable Council to ascertain whether these Regulations are being complied with, in accordance with Regulation 10.1.3. The report shall be in such form, and shall address such issues, as Council may direct.
- 3.5 An **Independent Accountant** means a firm which is a registered auditor under the applicable legislation in the United Kingdom or Republic of Ireland, and which has satisfied itself that it is independent of the Firm on which the Independent Accountant is reporting, in accordance with the relevant sections of the ICAS Code of Ethics.
- 3.6 **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 4 which comprises or includes Clients' Money and money due to the Firm.
- 3.7 A reference in these Regulations to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that statute or statutory provision.

## 4. Opening a Client Bank Account

- 4.1 Subject to Regulation 5.2, a Firm must have one or more current Client Bank Accounts if it receives or holds:
- 4.1.1 Clients' Money;
  - 4.1.2 Mixed Monies; or
  - 4.1.3 money which the Firm is required to pay into a client account under Regulation 5.2.
- 4.2 All money which is Clients' Money must be held by a Firm in a Client Bank Account.
- 4.3 Clients' Money must be held in the currency in which it was received unless contrary formal instructions are received from the client.
- 4.4 On opening a Client Bank Account, a Firm must notify the Bank in writing that:

- 4.4.1 all money standing to the credit of the account is held by the firm as Clients' Money;
  - 4.4.2 the Bank may not combine the account with any other account, or exercise any right to set off or counterclaim against the account for any money owed to it by any other account of the Firm;
  - 4.4.3 interest payable on the money in the account must be credited to that account;
  - 4.4.4 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
  - 4.4.5 if it is not otherwise clear from the Bank's terms and conditions for the account, the Bank must acknowledge in writing that it accepts these terms.
- 4.5 For a Client Bank Account in the United Kingdom or Republic of Ireland, if the Bank does not provide the acknowledgement required under 4.4 above within 30 business days of the Firm sending the notice, the Firm must withdraw all money from the account, and either:
- 4.5.1 deposit the money with another Bank in a Client Bank Account; or
  - 4.5.2 return the money to the client.
- 4.6 A Firm may only hold Clients' Money in a Client Bank Account outside the United Kingdom or the Republic of Ireland if:
- 4.6.1 the client is informed in writing of the country or territory where the account will be held;
  - 4.6.2 the requirements of Regulation 4.2.5 have been satisfied; and
  - 4.6.3 the client has agreed in writing to the money being paid into, or remaining in, that Client Bank Account.
- 4.7 Where a Firm has power or control over a client's own bank account, though not meeting the definition of Clients' Money, it must ensure that it:
- 4.7.1 has the specific written authority of the client acknowledged by the Bank before exercising that authority;
  - 4.7.2 maintains adequate records of the transactions it undertakes.

## 5. Payment into a Client Bank Account

- 5.1 Clients' Money or Mixed Monies received by a Firm or by any Principal must be paid into a Client Bank Account, or to the client, by no later than the end of the following business day.
- 5.2 A Firm must only pay money into a Client Bank Account, if:
- 5.2.1 the Firm is required to make such payment under these Regulations; or
  - 5.2.2 the money is the Firm's own money and:
    - (i) it is the minimum amount required to be paid in order to open or maintain the account; or
    - (ii) it is being paid in order to restore any money paid out of the account in contravention of these Regulations.
- 5.3 A Firm which discovers that it has incorrectly paid money into a Client Bank Account shall immediately take such steps as are necessary to withdraw the money from the account.
- 5.4 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.

## 6. Interest

- 6.1 Subject to Regulations 6.2 and 6.3, and such guidance as may be issued by ICAS, a Firm must:
  - 6.1.1 place Clients' Money in an interest-bearing account unless the interest earned would not be material;
  - 6.1.2 ensure that an appropriate rate of interest on the money is earned; and
  - 6.1.3 ensure that all interest earned is paid or credited to the client, or otherwise dealt with as the client instructs in writing.
- 6.2 Regulation 6.1 shall not apply to Clients' Money held by a Firm as stakeholder though a Firm may not itself earn interest on it unless Regulation 6.3 applies.
- 6.3 The Firm and the client may agree in writing different arrangements for the payment of interest on Clients' Money held.
- 6.4 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 6.3.
- 6.5 For the purposes of Regulations 6.1 to 6.4, 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.

## 7. Withdrawal from a Client Bank Account

- 7.1 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.
- 7.2 A Firm may withdraw from a Client Bank Account, as soon as is reasonably practicable:
  - 7.2.1 (i) money, not being Clients' Money, paid into a Client Bank Account for the purpose of opening or maintaining the account; or (ii) the elements of Mixed Monies which are not Clients' Money;
  - 7.2.2 money paid into a Client Bank Account contrary to these Regulations or which would have been so but for Regulation 5.3;
  - 7.2.3 money required to be withdrawn under Regulation 6.1;
  - 7.2.4 interest which the client has agreed in writing should not be paid to them, in accordance with Regulation 6.3;
  - 7.2.5 money properly required for a payment to a client or, with the written authority of that client, on their behalf;
  - 7.2.6 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;
  - 7.2.7 money drawn on a client's authority or in conformity with any contract between the Firm and the client;
  - 7.2.8 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, in accordance with Regulation 6.5.

Any withdrawal from a Client Bank Account may only be made where a specific authority in respect of that withdrawal has been formally approved 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.

- 7.3 The Firm must, at all times, ensure that:
  - 7.3.1 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

- 7.3.2 no amount may be withdrawn from the Client Bank Account for any client which is greater than the credit balance held for that client.
- 7.4 Further to Regulation 7.2, money may only be withdrawn from a Client Bank Account for or towards payment of fees payable by the client to the Firm if:
  - 7.4.1 the precise amount has been agreed by the client or has been finally determined by a court or arbiter; or
  - 7.4.2 the fees have been accurately calculated in accordance with a formula agreed in writing by the client on the basis of which the amount can be determined; or
  - 7.4.3 thirty days (or such other period as may have been formally agreed with the client) have elapsed since the date of delivery to the client of a statement of fees and the client has not questioned the amount specified as due, providing always that withdrawal has been formally approved 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.

## **8. Records and Reconciliation**

- 8.1 A Firm must keep Clients' Money records (including the notice and acknowledgement under Regulation 4.2) which show:
  - 8.1.1 details of all money paid into and out of all Client Bank Accounts;
  - 8.1.2 entries of all Clients' Money paid direct to the client, or, on the client's instructions, paid to a third party, identifying that person;
  - 8.1.3 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;
  - 8.1.4 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
  - 8.1.5 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.

## **9. Clients' Money held in the Client Bank Accounts**

- 9.1 A Firm must undertake the following reconciliation exercises at least once every five weeks, and, where any differences arise, correct them immediately (unless the differences arise solely as a result of timing differences):
  - 9.1.1 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
  - 9.1.2 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.
- 9.2 Records kept in accordance with Regulations 8, 9 and 10.1.1 shall be preserved and available for inspection for at least six years from the date on which they were made.

## **10. The Responsibilities of a Principal**

- 10.1 Upon receipt of a request from ICAS, and upon such terms and conditions as may be stipulated by ICAS, or an individual acting on its behalf, Principals shall:
  - 10.1.1 provide such confirmation, information or explanation as requested, whether by way of annual return or otherwise;
  - 10.1.2 permit the examination of or deliver up such internal systems or processes, books, papers or records as may be requested;
  - 10.1.3 provide an Independent Accountant's Report.

- 10.2 Principals must ensure that their Firm conducts a review at least annually, to consider whether the systems it maintains have been, and will continue to be, adequate to enable it:
  - 10.2.1 to comply with these Regulations; and
  - 10.2.2 to carry out the reconciliations in accordance with Regulation 9.1; and
  - 10.2.3 to prepare returns required under Regulation 10.1; and to confirm its compliance with these Regulations.
- 10.3 Principals shall notify ICAS of any breach of these Regulations which has been committed, or is likely to be committed, by their Firm. Such notification shall be provided within ten business days after the identification of the breach.
- 10.4 Principals shall make all reasonable efforts to ensure that their Firm complies with its obligations under these Regulations.
- 10.5 Unless it can be proved that a Principal or Principals are responsible for a breach of these Regulations, ICAS may make a disciplinary finding under Rule 13 against:
  - 10.5.1 the Firm; or
  - 10.5.2 each of the Principals of the Firm.

## 11. Alternates

- 11.1 A Firm which is a sole practitioner may not receive or hold Clients' Money unless it has certified in writing to ICAS that arrangements are in place, in accordance with Regulations 11.2 and 11.3, to 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.
- 11.2 The arrangements referred to in Regulation 11.2 shall be with either:
  - 11.2.1 an individual who is a member of one of the professional bodies comprising the Consultative Committee of Accountancy Bodies (CCAB), and holds a current practising certificate issued by the relevant professional body; or
  - 11.2.2 a corporate entity, providing that the majority of its Principals are individuals who satisfy the terms of Regulation 11.2.1.
- 11.3 The bank which operates the Client Money Account must have formally consented to the arrangements referred to in Regulation 11.1.
- 11.4 Any material variation of the arrangements referred to in Regulations 11.1 to 11.3 shall be brought to the attention of ICAS, as soon as is reasonably practicable.

## 12. Unidentified and Untraced Clients

- 12.1 Regulations 12.2 to 12.6 apply 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. For the purposes of this Regulation 12, such Client Money shall be referred to as "Unclaimed Money".
- 12.2 A Firm may treat Clients Money as Unclaimed Money only where the sums remain unclaimed following the taking of reasonable and proportionate steps by the Firm to trace the client, including such steps as may be set out in guidance issued by, or endorsed by, ICAS.
- 12.3 A Firm may deal with Unclaimed Money as follows where the money is held in a Client Money Account in Scotland:



- 12.3.1 if the Unclaimed Money is less than £50, the Firm may either remit the balance to the Office of the Queen's and Lord Treasurer's Remembrancer ("QLTR") or to a registered charity of the Firm's choice;
  - 12.3.2 if the Unclaimed Money is £50 or more, the Firm may remit the Unclaimed Money to the QLTR, subject to the deduction of any permitted fee.
- 12.4 A Firm may deal with Unclaimed Money as follows where the money is held in a Client Money Account in the United Kingdom, outside of Scotland:
- 12.4.1 if the Unclaimed Money is less than £500, the Firm may either remit the balance to a registered charity of the Firm's choice;
  - 12.4.2 if the Unclaimed Money is £500 or more, the Firm may seek the approval of ICAS to remit the balance to a registered charity of the Firm's choice, upon provision by the charity of an indemnity against any claim subsequently made by the client for the Unclaimed Money.
- 12.5 Any Unclaimed Money which the Firm chooses not to be paid to the QLTR or a registered charity in accordance with Regulations 12.3 and 12.4 shall be retained on deposit for the benefit of the unidentified or untraced client.
- 12.6 A Firm which holds Unclaimed Money in a Client Money Account outside of the United Kingdom should take legal advice on what to do with the Unclaimed Money.



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