Clients' Money Regulations

1. These Regulations are made by the Council of the Institute of Chartered Accountants in England and Wales, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They come 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 United Kingdom 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 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 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 client's 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 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 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 the Institute, 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 1989, the Companies (Northern Ireland) Order 1990 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 in the Members' Handbook.

"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 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 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.)

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 Firm;
      (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.

(NB. Sub-paragraph (i) was changed with effect from 1 July 2004. Any Firm that has opened a clients' money bank account using the former wording, that referred to an agent, has until 31 December 2005 to obtain a revised confirmation from the bank.)

(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 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 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 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 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 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
- (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 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 client's 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).

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.)

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:

(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 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:

(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 Firm 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 Firm must:

(a) 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

(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 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 the Institute 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 is a sole practitioner 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 sole practitioner. All such Firms 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 Firm, 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 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 client's 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 in the Members’ Handbook.

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, 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 client’s identity when a professional relationship is first established, rather than later when any client’s money may be first received. Guidance on suitable procedures to verify a client’s identity can be found in the Members’ Handbook statement 7.2 on 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 Members' Handbook statement 7.2.

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 client's 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. 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 firm in the event of the incapacity or death of the sole practitioner. The Regulation details when these arrangements have to be in place by. The arrangement could most easily be with another firm where the sole practitioner already has an alternate or consultation arrangement.

    There is no requirement that this arrangement has to be with another chartered accountant, but when selecting an alternate, the practitioner 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 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 the Ethics Advisory Services' helpline for assistance.

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

    The Advisory Service has a help sheet on general alternate arrangements that can be adapted for the purposes of these Regulations. This is on the website at www.icaew.com. Select 'members' then 'practice', then 'practice requirements and look under 'clients' money regulations'.

    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 the Institute's website which can be obtained as noted in the previous paragraph.

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 Firm's 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.