

New Zealand Institute of Chartered Accountants

PROFESSIONAL STANDARD NO. 2, 2008

**CLIENT MONIES**

*Issued by the Council of the New Zealand Institute of Chartered Accountants*

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## **Introduction**

- 1 This Standard is issued by the Council of the New Zealand Institute of Chartered Accountants. All references to the Institute in this document mean the New Zealand Institute of Chartered Accountants.

## **Purpose and Scope of this Standard**

- 2 In the course of the activities commonly undertaken by professional accountants, members or firms may hold, receive or otherwise deal with monies that are the property of their clients.
- 3 This Standard establishes standards and provides guidance regarding a member or firm's professional responsibilities when holding, receiving or otherwise dealing with monies on behalf of clients, including operation of client bank accounts.
- 4 The standards and guidance specifically address the following aspects of those activities, in relation to the member or firm:
- (a) receiving and holding client monies;
  - (b) establishing and maintaining trust accounts (as defined);
  - (c) operating client bank accounts;
  - (d) record keeping for client monies and client bank accounts;
  - (e) establishing adequate systems of internal control for client monies and client monies records;
  - (f) dealing with client monies in relation to associated finance entities; and
  - (g) examination and audit of a member or firm's systems and records that relate to client monies and client bank accounts.

## **Applicability**

- 5 This Professional Standard applies to all members, whether or not they hold a Certificate of Public Practice, and members' firms who receive and hold client monies, and/or who operate client bank accounts.
- 6 Members and their firms are encouraged to apply the requirements and guidance contained in this Standard in respect of other monies that fall under their control and that are not immediately due and payable on demand to their own account, though not meeting the definition of client monies. For example, members in business providing financial advisory or investment services to clients who are not otherwise required to comply with this Standard should endeavour to do so to the extent possible, as a matter of providing those services in line with best practices as set out in this Standard.
- 7 Compliance with this Standard is mandatory in terms of paragraph 130.1(b) of the *Code of Ethics*.

## **Effective Date**

- 8 This Standard applies to all client monies (as defined) held and/or received on or after 1 October 2008, and to operation of client bank accounts from that date. Member and firms must ensure this Standard is applied to all client monies, trust accounts and client bank accounts with effect from that date.

## **Transitional Arrangements for Associated Finance Entities**

- 9 If a member or firm, or their associated persons or entities described in paragraph 60, has existing loans and/or investments arising from transactions involving client monies of the member or firm that the member or firm entered into with those persons or entities on or before 31 December 2007, paragraphs 59 and 60 of this Standard will apply to the member or firm only when those loans or investments are rolled-over, or the terms of the loan or

investment are amended. Members and firms will not be able to apply the transitional arrangements set out in this paragraph to any such loans and investments arising from transactions addressed by paragraph 59 and 60 entered into after 31 December 2007.

## Objectives and General Principles

- 10 The overriding objective of a member or firm when holding, receiving or otherwise dealing with monies held in trust on behalf of clients or when operating client bank accounts, is to protect the client's interests. This objective must be achieved by the member or firm from the time client monies are received by the member or firm until such time as they are either returned to the client or otherwise dealt with in accordance with the client's authority.
- 11 Achievement of this objective requires adherence to the following general principles. The member or firm must:
- (a) be strictly accountable for all client monies and for their activities relating to the operation of client bank accounts; and
  - (b) comply with all laws and regulations relevant to the holding of and accounting for such monies or the operation of such bank accounts; and
  - (c) keep client monies separate from all other monies of the member or firm; and
  - (d)
    - (i) hold or apply client monies exclusively for that client to be paid to that client or as the client directs, and operate a client bank account only for the purposes of the client; and
    - (ii) not use, or cause or permit use of client monies or a client bank account for any other purposes (in particular client monies or client bank accounts must not be used for private or practice transactions of the member or firm). (Ref: Para A1–A2)
- 12 Members and firms may assume custody of or otherwise transact with client monies or operate client bank accounts subject to meeting their ethical and professional obligations and complying with any legal duties imposed on the member or firm in relation to such activities under applicable laws and regulations. (Ref: Para A3)
- 13 A member or firm's professional responsibilities regarding client monies must be carried out with due consideration of the member or firm's legal obligations in the context of undertaking particular types of activities. For example, members who deal with client monies in the course of providing investment advice or investment brokering services must give priority to compliance with all applicable laws and regulations.
- 14 In the event of any conflict between a member or firm's legal obligations and the requirements of this Standard then, to the extent the member is unable to reasonably avoid or otherwise mitigate that conflict, the member or firm must give priority to complying with their legal obligations.
- 15 These objectives and principles provide the context in which the requirements of this Standard are set.

## Definitions

- 16 For the purpose of this Standard, the following terms have the meanings specified.

*Accounting Services* means accounting services offered to the public as defined in the Institute's Rules including financial and investment advisory services provided in conjunction with the provision of accounting services as defined in the Institute's Rules by:

- (i) the member or firm, or
- (ii) an entity or entities controlled by the member or firm, or

- (iii) an entity or entities under the common control of the person(s) or entity that controls the member's firm.

*Associated Finance Entity* means an entity of whatever form, and whether or not separately incorporated, that engages in the business of deposit taking, investing or financing in which a member or interested person has, directly or indirectly, a material financial interest.

*Client*, in relation to a member or firm, includes any person or entity:

- (i) for whom the member or firm provides accounting services and on whose behalf the member or firm holds, receives or otherwise deals with money or securities from time to time, and/or
- (ii) who gives money to the member or firm for investment in an associated finance entity of the member or firm.

*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.

*Client monies* means any money (in whatever form) coming into a member or firm's control which is the property of a client. "Control" means a situation where a member, acting either solely or in conjunction with any one or more persons who are partners of or in the employ of the member or firm, can authorise the transacting of client monies. The definition of client monies does not include:

- (i) a cheque made payable to another person or entity, other than an associated finance entity of the member or firm, received by a member or firm for the sole purpose of forwarding to the payee if it is so forwarded promptly; or
- (ii) monies administered under any insolvency legislation for which a separate bank account is established by the receiver or liquidator; or
- (iii) fees paid in advance for professional work agreed to be performed and clearly identified as such.

*Deficiency* means a deficit or shortfall of client monies in a trust account either as disclosed in the records maintained by the member or firm for the trust account or in the records of the registered bank at which the trust account is held, but does not include any deficiency which the member is satisfied on reasonable grounds was caused solely by an error of the bank.

*Financial Institution* means a financial institution as defined in the Reserve Bank of New Zealand Act 1989 or in the Financial Transactions Reporting Act 1996.

*Firm* means a sole practitioner, partnership, corporate practice or other form of entity of professional accountants.

*Material Financial Interest* means, in relation to establishing whether a member or firm has a material financial interest in an entity for purposes of identifying an associated finance entity (paragraph 16(b)), or for purposes of paragraphs 55 to 60 of this Standard, an interest that is material or can reasonably be considered as being material in the context of the financial interests of either the member, the firm or the other person(s) and/or entities concerned.

For the purposes of this definition a member or firm is, or interested persons are, presumed, in the absence of evidence to the contrary, to have a material financial

interest when that member or firm or those interested persons together, whether directly or by nominee or as a beneficiary under a trust:

- (i) hold 20% or more of the shares, the nominal capital, the paid up capital, or the voting power of that entity; or
- (ii) have sole authority to operate any bank account relating to that entity; or
- (iii) have by any other means whatsoever effective control over the funds of that entity; or
- (iv) by reason of the extent of control over the funds of that entity, at the end of any income year would be entitled to 20% or more of the profits for that year if those profits were distributed by way of dividend or otherwise at the end of that year.

The presumption concerning the existence of a material financial interest should always be evaluated in light of the prevailing circumstances and applying the principle of economic substance over legal form. In some circumstances a member may be considered to have a material financial interest in an entity even if the member's interest is less than 20% of the entity's shares, nominal capital, paid up capital or voting power, and the converse also applies.

*Interested person* means:

- (i) any near relative of the member;
- (ii) any partner or personnel of the member or firm; and
- (iii) any near relative of the partner or personnel of the member or firm.

*Member* means a member of the New Zealand Institute of Chartered Accountants.

*Money* includes cash, foreign currency and any instrument for the payment of monies in any case where the instrument may be paid into a financial institution and any security for which title is transferable by delivery (for example, bills of exchange and promissory notes), including by electronic funds transfer.

*Near relative* includes:

- (i) spouse (whether legal or de facto), child (including by adoption), parent, sibling; and
- (ii) the spouse (whether legal or de facto), child (including by adoption), parent or sibling of any person in (m)(i).

*Personnel* means partners, principals, employees, officers, contractors or agents or similar of the member or firm.

*Registered Bank* means a registered bank as defined in the Reserve Bank of New Zealand Act 1989.

*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.

## Requirements

- 17 The requirements contained in this Standard are designed to enable members and firms to meet the objectives of this Standard. Members or firms must comply with these requirements in all cases where they are relevant.

### **Ethical and Professional Requirements**

- 18 The member or firm and its personnel must adhere to the Fundamental Principles set out in the *Code of Ethics* when holding, receiving or otherwise dealing with client monies and when operating client bank accounts.
- 19 The receipt or holding of client monies, or operation of client bank accounts, may create threats to a member or firm's compliance with the Fundamental Principles of the *Code of Ethics*. Members and firms must consider circumstances that create, or may create threats to their compliance with the Fundamental Principles and respond appropriately to mitigate or eliminate those threats through application of appropriate safeguards. (Ref: Para A4)
- 20 Other than for professional fees and disbursements as addressed in paragraph 48(b), the member or firm must not obtain any benefit(s) from holding, receiving or otherwise dealing in client monies or operating client bank accounts, including benefits deriving from the deposit and/or investment of client monies, without prior written authority from the client. (Ref: Para A5)

#### *Member acting as Trustee or under a Power of Attorney*

- 21 Members who act as trustees or under a power of attorney must comply with their legal and fiduciary duties as trustee or attorney in respect of client monies, and must apply this Standard to the extent they reasonably can. (Ref: Para A6–A7)
- 22 When accepting a power of attorney, members must require their powers to be expressed as being subject to their general professional obligations. (Ref: Para A8)
- 23 Members must manage conflicts when they arise, or are likely to arise, and must decline to act on a client instruction if doing so would result in them acting in breach of their ethical and professional obligations, unless compelled to do so by operation of law.
- 24 If the duties a member assumes as a trustee, whether deriving from the trust deed or from the nature of the trust, will or are likely to place the member in a position of conflict regarding the member's ethical and professional responsibilities and obligations, to the extent they would otherwise ordinarily apply, the member must:
- (a) decline the appointment as trustee; or
  - (b) if the member is already appointed as trustee, take all reasonably practicable steps to ensure there will be no breach of the member's professional responsibilities and obligations, and no failure to properly observe those responsibilities and obligations.

#### *Compliance with Legal Obligations*

- 25 A member must not:
- (a) receive or pay into a trust account or client bank account; or
  - (b) withdraw or pay out of a trust account or client bank account
- any money if the member has reason to believe it was obtained from, or is to be used for, illegal activities in New Zealand or that receiving or dealing with the money is otherwise unlawful. (Ref: Para A9–A10)

#### *Laws and Regulations Addressing Money Laundering and Terrorist Financing Activities*

- 26 When receiving, holding or otherwise dealing with client monies in accordance with the client's instructions and/or operating client bank accounts, members and firms must:
- (a) consider their obligations under applicable laws such as the Financial Transactions Reporting Act 1996 and the Terrorism Suppression Act 2002; and
  - (b) comply at all times with obligations arising under legislation and related regulations that aim to address criminal activities involving money laundering and terrorist financing. (Ref: Para A11)

### *Client Identification and Related Procedures*

- 27 The member or firm must:
- (a) consider the appropriate steps to establish the identity of the client and the source of the client monies on a satisfactory basis; and
  - (b) carry out those steps before agreeing to be engaged to receive or hold client monies. (Ref: Para A12–A14)
- 28 The member or firm must document the process followed to establish the identity of the client and the source of client monies received or held, including any legal advice obtained for that purpose.

### **Quality Control**

- 29 Members and firms who receive or hold client monies and/or operate client bank accounts must comply with Professional Standard No. 1 *Quality Control*.

### **Establishing a Trust Account**

- 30 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. (Ref: Para A15)
- 31 Trust accounts must be established and maintained at a registered bank in order that client monies are placed at relatively minimal risk.
- 32 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.
- 33 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.
- 34 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. (Ref: Para A16 -17)
- 35 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.

### **Client Bank Accounts**

- 36 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.

## **Receipt of Client Monies**

### *Cheques Made Payable to a Client (Ref: Para A18 -19)*

- 37 Money received by a member or firm by cheque made payable to the client must not be negotiated nor paid into a trust account without the prior written authority of the client.
- 38 Subject to paragraph 25, when a member or firm has written authority to negotiate a negotiable instrument received on behalf of a client that instrument must only be negotiated in accordance with that authority.
- 39 Where the member or firm has no written authority to negotiate a negotiable instrument received on behalf of a client that instrument should be despatched promptly to the client.

### *Investment of Client Monies (Ref: Para A20)*

- 40 A member or firm may invest client monies received on behalf of a client by the member or firm if the client so directs, but only with the client's prior written authority and subject to the provisions of paragraphs 55 to 60 if applicable.

### *Recording Receipts*

- 41 A member or firm must record the following information for every amount of client monies received, or money received for deposit in a client bank account:
- (a) the name of the person from whom the money was received;
  - (b) the amount of money;
  - (c) the client for whom the money is to be held;
  - (d) the purpose for which the money was received or other description of the money;
  - (e) the date on which the money was received;
  - (f) the form in which the money was received, namely whether by cheque, in cash, bank transfer or otherwise.
- 42 Client monies received by a member or firm in the form of documents of title to money must be safeguarded against unauthorised use and recorded in a register of documents of title. (Ref: Para A21)

### *Issue of Receipts*

- 43 A member or firm must ensure that a fully completed receipt containing the details specified in paragraph 41 is issued to acknowledge that the member or firm has received client monies, or money for deposit in a client bank account operated by the member or firm, if:
- (a) the person making the payment requests a receipt; or
  - (b) the payment is received in cash.

## **Payments into a Trust Account**

- 44 Subject to paragraph 30, and to paragraph 37 in the case of a cheque, client monies received in cash or by cheque or through the redemption or payment of any instrument must be deposited as soon as it is reasonably practicable to do so (normally by the next banking day) to the credit of the member or firm's trust account.
- 45 A member or firm must not allow any private or practice monies of the member or firm, or private monies of the member's near relatives, or of personnel, to be paid into a trust account unless:
- (a) required to be paid for the purpose of opening or maintaining the trust account and the amount so paid is the minimum required for that purpose;
  - (b) paid in order to restore any money paid out of the trust account in contravention of this Standard; or



- (c) the payment relates to real property or investment transactions if those transactions are kept in a defined and separate ledger account and are dealt with in all respects as if the member, member's near relatives or the member or firm's personnel, were a client.

*Interest Earned on Client Monies*

- 46 All interest earned on client monies must be credited to the client concerned, or as the client otherwise instructs. Before interest earned can be applied other than being credited to the client, the client's prior written authority is required. (Ref: Para A22)
- 47 All interest earned on client monies, whether credited to the client or otherwise dealt with in accordance with the client's instructions, must be disclosed to the client in accordance with paragraph 61 and properly recorded in accordance with paragraph 64(b).

**Payments from Trust Accounts and Client Bank Accounts**

- 48 A member or firm must not withdraw monies from a trust account or a client bank account except for the following purposes:
- (a) making payments to the client entitled to those monies, or to a third party in accordance with the client's directions; or
  - (b) making payments to the member or firm for professional fees and disbursements due, with the client's written authority in accordance with paragraph 49 and 50; or
  - (c) making a payment that is otherwise required by law or a Court.
- 49 If the client's directions in relation to paragraph 48(a) are oral and not confirmed in writing by the client prior to the money being drawn from the trust account or client bank account the member or firm must, immediately after withdrawing or paying the money from the account, confirm in writing to the client the action taken and the earlier oral instructions or directions of the client.
- 50 In relation to paragraph 48(b), the member or firm's professional fees or disbursements must not be withdrawn without written authority of the client, and:
- (a) When the client has given a written authority to withdraw specific fees and/or disbursements, the fees and/or disbursements may be withdrawn and the client must be notified on a timely basis after the withdrawal.
  - (b) When a general written authority is held to withdraw fees and/or disbursements the member or firm must furnish the client with an invoice for the professional fees and disbursements due, and allow the client a sufficient time, not less than 15 working days or some longer period as appropriate, before the amount due may be withdrawn from the client monies. The amount due may be withdrawn prior to the 15 working day period if the member or firm receives notice from the client of acceptance of the invoice.

*Payments from a Trust Account*

- 51 A member or firm must ensure that every payment from a trust account is made:
- (a) by a cheque drawn in the name of the member's firm which includes the words "trust account", is crossed "not transferable" and is made payable to "order"; or
  - (b) by direct transfer from the trust account to another account at a financial institution; or
  - (c) with the specific written authority of the client by a cheque which may be negotiable for cash.
- 52 Bank and other charges on the trust account are payable by a member or firm and not from the client monies or from interest earned on those monies.
- 53 A member or firm must not make a payment to or on behalf of a client from a trust account that is in excess of the amount of funds standing to the credit of that client in the trust account. (Ref: Para A23)

- 54 Any trust account held by a member or firm must not be overdrawn at any time. If any deficiency occurs in a trust account the member or firm must immediately notify the Director of Practice Review of the Institute, and the auditor if one is appointed in accordance with paragraph 69.

**Restrictions on Transactions with Associated Finance Entities**

- 55 Except as allowed for in paragraph 56, a member or firm must not cause or permit any client monies to be lent to or otherwise invested, either directly or indirectly, in :

- (a) that member or firm; or
- (b) a partner, personnel or near relative of that member or firm; or
- (c) a trustee for, or nominee of, that member or any person in paragraph 55(b); or
- (d) any entity in which that member or firm, or any person in paragraphs 55(b) or (c) has a material financial interest.

Any business or operational structure adopted by a member or firm that has the effect of enabling the member or firm to circumvent the application of the restrictions imposed by this paragraph shall be disregarded for the purposes of applying these restrictions.

**Lending or Investing Client Monies with an Associated Finance Entity**

- 56 A member or firm may lend, invest or otherwise deal with client monies through an associated finance entity as defined in paragraph 16(b), provided the member or firm obtains the client's prior specific written authority; and complies with either paragraph 57 or 58 as applicable in the circumstances.

- 57 A member or firm may lend, invest or otherwise deal with client monies through an associated finance entity of the member or firm if:

- (a) the associated finance entity is an "issuer" as defined in the Financial Reporting Act 1993 as amended from time to time; and
- (b) the client monies in question are lent, invested or otherwise dealt with under a registered prospectus, investment statement or equivalent disclosure document in accordance with either the Securities Act 1978 or an exemption notice issued under that Act, a copy of which is provided to the client prior to the client monies being lent, invested or otherwise dealt with.

- 58 If an associated finance entity does not meet the criteria in paragraph 57, the member or firm may apply client monies to loans or investments in an associated finance entity of the member or firm only when:

- (a) the client has:
  - (i) been informed by the member or firm in writing of the member or firm's interest or association with the associated finance entity; and
  - (ii) acknowledged in writing that the member or firm has informed them that they may wish to take independent advice prior to authorising the application of client monies to any such transactions; and
  - (iii) been given the option by the member or firm to receive a copy of the associated finance entity's most recent audited financial statements prior to the application of client monies to any such transactions; and
- (b) the associated finance entity's annual financial statements are subject to audit by an auditor in every year in which any such lending, investing or dealing is made or continues to be made; and
- (c) a copy of the associated finance entity's most recent audited financial statements including the audit report issued for those financial statements is forwarded to the

client and to the Director of Practice Review of the Institute on a timely basis after conclusion of the audit; and

- (d) the associated finance entity complies with any applicable lending restrictions or covenants specified or agreed with the client or with the member or firm for lending, investing or otherwise dealing with client monies; and
- (e) the member or firm's activity in respect of client monies is audited by an auditor annually in accordance with paragraphs 69 to 73, and a copy of the audit report for the most recent audit of the member or firm's client monies activity has been forwarded to the Director of Practice Review of the Institute.

*Prohibited Transactions between an Associated Finance Entity that has Received Client Monies and the Member or Firm* (Ref: Para A24)

- 59 A member or firm must not borrow from, and no firm may issue financial interests in itself to any associated finance entity which has received client monies directly or indirectly from or on behalf of the member or firm.
- 60 Further to paragraph 59, a member or firm must not cause or permit or facilitate any associated finance entity which has received client monies directly or indirectly from or on behalf of the member or firm to lend to or otherwise invest in, directly or indirectly:
- (a) that member or firm; or
  - (b) a partner, personnel or near relative of that member or firm; or
  - (c) a trustee for, or nominee of that member or any person in paragraph 60(b); or
  - (d) any entity in which that member or firm, or any person in paragraph 60(b) or (c) has a material financial interest.

**Issue of Statements to Clients**

- 61 The member or firm must prepare and issue, on a timely basis, a statement containing details of the member or firm's application of client monies and any interest earned on client monies, either to the client or to such other person as the client directs in writing. This statement must be issued:
- (a) in respect of all transactions, at least annually; and
  - (b) in respect of any transaction, at any time upon request by the client; and
  - (c) when an account is closed.
- 62 With regard to client bank accounts operated by the member or firm, the member or firm must prepare and issue on a timely basis, a statement containing details of the member or firm's operation of the client bank account, either to the client or to such other person as the client directs in writing. This statement must be issued:
- (i) in respect of all transactions, at least annually; and
  - (ii) in respect of any transaction, at any time upon request by the client; and
  - (iii) when any client bank account is closed or if the member or firm's authority to operate a client bank account is revoked.

**Internal Controls and Records**

- 63 The member or firm must maintain an adequate system of internal control over client monies and over the operation of client bank accounts, to ensure that the member or firm will achieve the objectives and general principles, and meet the requirements established in this Standard. In addition, the system of internal control must ensure that:
- (a) client monies are properly safeguarded and accounted for; and/or

- (b) client bank accounts are properly safeguarded against unauthorised access/use to the extent the member or firm controls the operation of those accounts.

64 A member or firm must keep client monies records in such a manner as to disclose clearly:

- (a) the details of all transactions undertaken with regard to client monies, including:
  - (i) details of all transactions undertaken in respect of client bank accounts;
  - (ii) details of all transactions undertaken in respect of the member or firm's trust accounts;
  - (iii) details of all client monies paid direct to the client, or to a third party on the client's instructions, identifying that person;
  - (iv) details of all cheques received and endorsed by the member or firm for payment to the client, or to a third party on the client's instructions, identifying that party;
  - (v) details of all electronic transfers of money received or made, and of money transferred direct to the client, or to a third party on the client's instructions, identifying that party;
  - (vi) details of any errors in transactions undertaken with regard to client monies; and
- (b) the details of all interest earned on client monies and how the interest has been applied by the member or firm in accordance with paragraph 46; and
- (c) the position of the member or firm's trust accounts and the client monies therein at all times and to enable, when required, the same to be conveniently and properly audited. (Ref: Para A25)

65 A member or firm operating a client bank account must establish and maintain adequate records of the transactions it undertakes. The records must include:

- (a) a register of signing authorities for all client bank accounts the member or firm has received client authority to operate; and
- (b) details of transactions as set out in paragraph 64(a) as applicable to the operation of client bank accounts.

66 If the client is also transacting business through the bank account and receives statements directly from the financial institution, the member or firm must provide details of transactions undertaken by the member or firm to the client on a timely basis.

#### *Reconciliation*

67 The member or firm must balance client monies records and reconcile these monthly to the trust accounts on a timely basis. If any difference arises the difference must be corrected immediately unless it arises solely as a result of a timing difference.

68 When operating a client bank account the member or firm must ensure, except when the client also transacts business through the client bank account and receives statements directly from the financial institution, that the records for the client bank account are balanced and reconciled monthly to the client bank account on a timely basis. If any difference arises the difference must be corrected immediately unless it arises solely as a result of a timing difference.

#### *Audit and Inspection*

69 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. (Ref: Para A26–A28)

- 70 The auditor of a member or firm’s activity in respect of client monies under paragraph 69 must notify the Director of Practice Review of the Institute immediately of any circumstances which come to the auditor’s notice and which in the opinion of the auditor should be reported if:
- (a) the member or firm has contravened this Standard; or
  - (b) the auditor discovers any matter in relation to the member or firm’s activities that appears to the auditor to involve dishonesty on the part of the member or firm or the member or firm’s personnel; or
  - (c) the auditor discovers any loss or deficiency of client monies or any failure by the member or firm to properly apply client monies for the purposes authorised by the client; or
  - (d) the auditor considers that any other matter in relation to the audit should be communicated to the Institute.
- 71 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.
- 72 A member or firm must allow the Institute to inspect the member or firm’s activity in respect of client monies and/or client bank accounts, including any records and information maintained or held by the member or firm that relate to client monies and client bank accounts. (Ref: Para A29–A30)
- 73 A member or firm must allow the auditor, inspector, or person(s) authorised by the Institute to carry out practice reviews, full access to the member or firm’s documents, information, files and accounting records relating to client monies. A member or firm must similarly allow access to client bank account records, and those relating to other bank accounts if the Institute has reason to believe these have been used to deal with client monies and when those records are held by, or access is controlled by the member or firm. The member or firm must provide all information or explanations as and when required, and not hinder, obstruct or delay an auditor or inspector or authorised person(s) in the performance of their duties or the exercise of their powers. (Ref: Para A31–A32)

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## **Application and Other Explanatory Material**

### **Objectives and General Principles (Ref: Para 10–15)**

- A1 A client’s authority in relation to use of client monies can be established:
- (a) by a general authority containing the client’s instructions to the member to undertake or perform certain types of actions or transactions in relation to the client’s monies; or
  - (b) by establishing a specific authority containing the client’s instructions authorising the member to undertake specific transactions in relation to the client’s monies.
- The power to operate client bank accounts may take the form of a power of attorney, appointment as trustee of a trust, or signing authorities on clients’ bank accounts.
- A2 A member or firm’s terms of engagement agreed with the client may record matters such as:

- (a) the intended use(s) or purpose(s) for holding or receiving the client monies and/or operating a client bank account;
- (b) establishing a general authority for use of client monies and/or operating a client bank account;
- (c) the arrangements for payment to the member or firm for professional fees and disbursements including, if applicable, the process for obtaining the client's authorisation for withdrawal of fees and/or disbursements by the member or firm from the client's trust account or client bank account when due.

A3 The requirements contained in this Standard address the professional responsibilities of members and their firms as distinct from any responsibilities which may be imposed by law and regulations (such as, the Companies Act 1993, the Financial Transactions Reporting Act 1996, the Proceeds of Crime Act 1991, the Terrorism Suppression Act 2002, the Mutual Assistance in Criminal Matters Act 1999, the Income Tax Act 2004, the Tax Administration Act 1994 and the Trustee Act 1956, as amended from time to time). Members and firms should ensure they are aware of all applicable legislation and regulations relevant to their involvement(s) with client monies and operation of client bank accounts.

### **Ethical and Professional Requirements**

#### *General Ethical Obligations* (Ref: Para 18–20)

- A4 Client monies should not ordinarily be held, deposited or invested in an entity that is an audit client of the member or firm. This includes holding monies in trust accounts or in deposit or investment accounts in accordance with client instructions. In such situations, in accordance with the requirements of the *Code of Ethics*, the member or firm should assess the significance of any threats to the member or firm's independence, real or perceived, in relation to the audit engagement. The member or firm should take appropriate action(s) to either:
- (a) reduce threats to independence in relation to the audit engagement to an acceptable level through application of appropriate safeguards; or
  - (b) avoid the independence threat altogether when assessed by the member or firm as being significant in relation to the audit engagement.
- A5 Members and firms are not permitted to obtain benefits other than professional fees and disbursements that relate directly to holding, receiving or otherwise dealing in client monies and/or operating client bank accounts, unless the client has provided prior written authority for the member or firm to receive such other benefits. Such benefits include monetary and non-monetary benefits, for example (without limitation) commission; interest; non-cash benefits; free or subsidised benefits and/or services; fee rebates; sponsorships of functions, seminars, conferences or meetings; cash payments and/or goods not directly attributable to a direct client transaction; shares or options in a related party of the client or a third party; and alternative fees, benefits or other inducements received either from the client or third parties.

#### *Member acting as Trustee or under a Power of Attorney* (Ref: Para 21–24)

- A6 Difficulties can arise when client monies or client bank accounts are held or administered by a member as trustee or under the terms of a power of attorney. A member appointed as a trustee of a trust or as attorney for a client must not be compromised in that role, or in their ability to properly discharge the functions and obligations required of them in that capacity under the general law.
- A7 A member should not accept a trusteeship if the member may potentially be placed in the position where decisions made by others would result in the member being in breach of this Standard. For example, a member should exercise caution if the member may be bound by the majority decisions of other non-member trustees of a trust.

- A8 If a member holds, receives or deals with client monies or operates a client bank account under a power of attorney, the member is not relieved from the member's ethical and professional responsibilities and obligations simply by virtue of the fact that they are acting under authority of a power of attorney.

*Compliance with Legal Obligations (Ref: Para 25)*

- A9 Through their association with client monies and client bank accounts members and firms face the risk of becoming involved in illegal activities, extending also to involvement in criminal activities. In the context of this Standard the term "illegal activities" includes circumstances where the client applies, or intends to apply monies for the client's own purposes and the member is aware that the client has no entitlement to those monies. In such circumstances, members should avoid assisting the client in wrongfully retaining funds to which the client is not, or may not be entitled. Members should discharge their legal responsibilities in the light of their ethical and professional responsibilities, with a view to ensuring that:
- (a) they do not assist dishonest actions on the part of the client; and
  - (b) they are adequately protected against potential criminal or civil liability that might arise from their involvement with the client and/or client monies.
- A10 In addition, if a member has a reasonable basis to believe that a client is not entitled to monies received by the member or the member's firm on the client's behalf, the member should consider taking legal advice as to appropriate courses of action available to the member in the circumstances, including the following possible options:
- (a) requesting the client to inform the relevant third party/parties who are entitled to receive the monies concerned; and/or
  - (b) declining to carry out the client's instructions; and/or
  - (c) forwarding notification to relevant third parties.

*Client Identification and Related Procedures (Ref: Para 27–28)*

- A11 If a member or firm is requested to receive, hold or otherwise deal with money on behalf of a client, or to operate a client bank account without performance of other services (unrelated to holding, receiving or otherwise dealing with those monies in accordance with the client's instructions), the member or firm should be mindful of risks of becoming involved in money laundering or terrorist financing activities, and associated legal risks, and take reasonable steps to ensure the services provided do not in any way facilitate or contribute to such activity.
- A12 The client's identity should be established at the time when the member or firm first establishes a professional relationship with the client, rather than when any client monies may first be received or when the member or firm's operation of any client bank account commences.
- A13 The member or firm should obtain an understanding of the nature of the client's business and/or other activities that give rise to client monies, sufficient to understand the source of client monies.
- A14 The member or firm should consider the need to obtain legal advice in the case of any doubt as to the extent of the member or firm's obligations in regard to establishing the client's identity and the source of client monies.

**Establishing a Trust Account (Ref: Para 30)**

- A15 The client may give the member or firm directions about how client monies received or to be received by the member or firm are to be dealt with, so that the member or firm would not deposit those monies into a trust account of the member or firm as would otherwise be required under paragraph 30. For example the client may instruct the member or firm to

invest those monies or otherwise deal with them as part of the member or firm's administration of the client's investment portfolio.

- A16 If it seems likely that the client monies deposited in a trust account could earn material interest the member or firm should seek the client's authority to place those monies in an interest-bearing trust account.
- A17 Client monies held in a trust account on bulk deposit are deemed not to be investments of client monies which would otherwise require the client's prior written authority under paragraph 39. Withdrawals from accounts holding client monies should be transacted through the member or firm's trust account.

### **Receipt of Client Monies**

#### *Cheques Made Payable to a Client* (Ref: Para 37–39)

- A18 A member or firm may receive cheques for clients from the Inland Revenue Department for refunds of overpayments of taxes by clients.
- A19 If a member or firm receives a cheque made payable to a person and the member is in doubt whether or not the person remains a client of the member or firm or is unable, after reasonable enquiry, to contact the person, the cheque should be returned to the payer, drawer or sender.

#### *Investment of Client Monies* (Ref: Para. 40)

- A20 When a member or firm invests client monies under paragraph 40, the member or firm should, in addition to complying with the requirements of this Standard which apply in that circumstance, ensure that the client has been forwarded or given a written statement signed for or on behalf of the member or firm containing the following information:
- (a) the name, address and occupation or description of the borrower or other recipient;
  - (b) the principal sum invested;
  - (c) a statement as to security of the investment;
  - (d) the period of investment;
  - (e) the rate of any interest or fixed dividend payable and the dates upon which payments of interest or fixed dividends are due; and
  - (f) any other appropriate details of other relevant factors or circumstances that have influenced the member or firm's investment of client monies in accordance with the client's authority.

#### *Recording Receipts* (Ref: Para 42)

- A21 Examples of documents of title to money include cheques (which may be post-dated), promissory notes and bearer debentures.

### **Payments into a Trust Account**

#### *Interest Earned on Client Monies* (Ref: Para 46–47)

- A22 In accordance with paragraph 46, the client may, with the client's prior written authority, allow different arrangements for payment of interest on client monies held. This agreement may be contained in the engagement letter sent to the client.

### **Payments from Trust Accounts and Client Bank Accounts**

#### *Payments from a Trust Account* (Ref: Para 51–54)

- A23 When a member or firm holds client monies for a number of clients in one or more trust accounts, the individual client monies balances that constitute the trust account balance should not be overdrawn at any time.



## **Restrictions on Transactions with Associated Finance Entities**

*Prohibited Transactions between an Associated Finance Entity that has Received Client Monies and the Member or Firm* (Ref: Para 59–60)

A24 In line with the objectives and general principles set out in this Standard and to avoid risks to members' ability to maintain their professional objectivity in relation to performance of professional responsibilities owed to their clients, this Standard proscribes the activities of a member or firm in relation to transactions entered into with associated finance entities that have received client monies from a member or firm, either directly or indirectly, as set out in paragraphs 59–60.

## **Internal Controls and Records** (Ref: Para 63–68)

A25 A member or firm's records of client monies and client bank accounts should include (as applicable in each case) individual records for clients, a record of receipts and payments, a trust journal, client ledger and register of documents of title, and such other records as are necessary to disclose clearly the position of the member or firm's trust accounts.

## **Audit and Inspection**

*Audits of Members Activities in relation to Client Monies or Client Bank Accounts* (Ref: Para 69)

A26 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.

A27 Trust accounts maintained by a member or firm acting as a receiver/manager, statutory manager, liquidator (under company legislation) or assignee (under insolvency legislation) or trustee/statutory supervisor (under the Securities Act 1978 or the Securities Act Regulations 1983) are not required to be audited separately under this Standard.

A28 A member or firm is disqualified from accepting or continuing with an audit of another member or firm's client monies or client bank accounts when that other member or firm audits the member or firm's activity in respect of client monies or client bank accounts. This is to maintain the independence required for performance of the audit.

*Inspections Carried out by the Institute* (Ref: Para 72–73)

A29 The Institute may, without providing reasons and at such times as it considers appropriate, inspect a member or firm's client monies or client bank accounts, including records and information maintained or held by the member or firm relating to client monies or client bank accounts, whether or not those monies, records and information are required to be audited under this Standard.

A30 This may be for purposes of the Institute's Practice Review activities or as part of an investigation undertaken by the Institute for separate purposes.

A31 Members and firms should inform clients for whom they hold client monies or operate client bank accounts of the Institute's powers of inspection relating to client monies, trust accounts, client bank accounts and records of these held and/or controlled by the member or firm. This should be done at the time the member or firm first agrees to receive or hold client monies for a client or to operate client bank accounts, and should be recorded in the terms of engagement issued to the client.

A32 Paragraph 140.7(c) of the *Code of Ethics* provides that a member's professional duty of confidentiality is subject to the member's professional duty to disclose information to the Practice Review Board when the member is undergoing a practice review, and to other relevant Institute Boards performing functions relating to investigation of professional conduct and member discipline.

*Fees and Expenses of an Audit or Inspection* (Ref: Para 69–73)

- A33 In the normal course of events the costs of an audit will be borne by the member or firm. Further, the fees and expenses of an audit or inspection are payable by the member or firm, and not from client monies nor the interest earned on those monies or client bank accounts.

## **Appendix**

### **Comparison of PS-2 (Revised) with the IFAC Code of Ethics for Professional Accountants**

This Appendix, which was prepared as at 20 March 2008 and which deals only with significant differences, is produced for information purposes only and does not form part of the standards in PS-2.

PS-2 incorporates the provisions of Section 270 Custody of Client Assets of the International Federation of Accountants' Code of Ethics for Professional Accountants, and is consistent in all material respects with the Standards contained in Section 270.