**DRAFT BYE LAW 4**

**CLIENTS’ MONEY**

**4.1 Introduction**

**4.1.1** In this Bye Law 4, a reference to any statute or statutory provision includes reference to that statute or statutory provision as from time to time amended, extended, or re-enacted, with or without amendment.

**4.1.2** In this Bye Law 4, unless there is something inconsistent in the subject or context, words denoting the singular number only, include the plural and vice-versa; words denoting one gender only, include the other genders; words denoting *firms* include partnerships, body corporates and sole practitioners and vice-versa; words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall refer, unless the context clearly indicates to the contrary, to the whole of this Bye Law 4 and not to any particular section or paragraph thereof.

**4.1.3** The headings and captions to the paragraphs in this Bye Law 4 are inserted for convenience of reference only and do not affect its construction or interpretation.

**4.1.4** The defined terms set out in Article 1 and Article 48 of the *Articles* have the same meaning in this Bye Law 4.

**4.2 General**

**4.2.1** This Bye Law 4 applies to all client money held by a *firm* other than money

 held in respect of investment services/investment business under Bye Law 14.

**4.2.2** A *firm* which receives or holds clients’ money must immediately open one or more client bank accounts. A *firm* may maintain one or more client bank accounts as appropriate. A *firm* is not required to have separate client money bank accounts for individual clients. All money which is clients' money must be held in a client bank account if it is not being passed directly to the client or on the client’s instructions paid directly to a third party if the cheque can be endorsed over.

**4.2.3** Before agreeing to act for a client, *firms* must consider whether acceptance of the new engagement would create any threats to compliance with the Fundamental Principles as defined in Section 110 in the *Code of Ethics*

**4.2.4** A *firm* may not override this Bye Law 4 on the instructions of a client.

**4.2.5** No money in a client bank account can be used for any purpose other than in accordance with the client’s authority and order.

**4.2.6** Where a *firm* has power or control over a clients’ own account, though not meeting the definition of *clients’ money*, it must ensure that it has the specific written authority of the client acknowledged by the bank before exercising that authority and it must maintain adequate records of the transactions it undertakes.

**4.2.7** Client money shall be kept in a client bank account by a *firm* for a specific purpose and for no longer than is necessary for that specific purpose.

**4.2.8** A *firm* may not hold client money in a client bank account for the sole purpose of holding the money on deposit for the client.

**4.2.9** *Firms* assuming custody of clients’ money or other assets, may only do so when permitted by law and in compliance with any additional duties imposed legal or otherwise, as provided for by Section 350 - Custody of Client Assets, of CPA Ireland’s Code of Ethics.

**4.3 Fees Paid in Advance for Professional Work Agreed**

**4.3.1** *Firms* are strictly accountable for all clients’ money that the *firm* receives and shall not regard fees paid in advance for professional work agreed to be performed and clearly identifiable as Clients’ money for the purpose of this bye law.

**4.4**  **Investment Business and Clients’ Money**

**4.4.1** Investment business clients’ money is clients’ money relating to investment business as defined in Bye Law 14 Investment Business Regulations). An authorised *firm* shall hold Investment Business Clients’ Money in accordance with Bye Law 14.

**4.4.2** Subject to these regulations, a *firm* which receives or holds Clients’ money or mixed money or money which under 4.7.1 the *firm* is required without delay to open one or more client bank accounts.

**4.5. Client identification**

4.5.1. Before accepting any client’s money on behalf of a client the *firm* must perform appropriate customer due diligence in accordance with Anti Money Laundering Regulations

**4.6** **Opening a Client Bank Account**

**4.6.1 On opening a client bank account, a firm must notify the bank *In Writing* that:**

1. all money is held by the firm as a trustee (or agent) and that the bank may not combine the account with any other account or exercise any right to set off or counterclaim against that account for any money owed to it by any other account of the *firm*;
2. interest payable on the money in the account must be credited to that account;
3. 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. the bank must acknowledge *In Writing* that it accepts these terms.

**4.6.2** If the bank does not provide the acknowledgement required under 4.6.1(4) within twenty *business days* of the *firm* sending the notice, the f*irm* must:

* withdraw all money from the account
* close the account; and
* deposit the money with another bank in a client bank account; or
* as a last resort, return the money to the client.

**4.6.3** Clients’ *money* must be held in the currency in which it is received unless the client instructs otherwise in writing.

**4.6.44.64.64.6.4**.A *firm* may only hold Clients’ money in a bank outside the Republic of Ireland if the client is informed *In Writing*:

* of the country or territory where the account will be held; and
* the *client* has agreed *In Writing* to the money being paid into, or remaining in, that bank.

either;

* that the bank has given the acknowledgement required under 4.6.1(4);
* 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 Republic of Ireland.

**4.6.5** A *firm* may not hold Clients’ money (or money which would, if held in a bank be Clients’ money) outside the European Union unless:

* the client is informed *In Writing* of the country or territory where the account will be held; and
* the client has agreed *In Writing* to the money being paid into, or remaining in, the institution where the money is held; and
* the client accepts *In Writing* that where money is so held it will not have the protection afforded by this bye law.

**4.7 When a *Firm* Must Pay Money into a Client Bank Account**

**4.7.1** A *firm* must only pay money into a client bank account, if:

1. the *firm* is required to make such payment under this Bye Law 4 ;
2. the money is the *firm*'s own money ; and
3. 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
4. it is so paid in order to restore in whole or in part any money paid out of the account in contravention of this Bye Law 4.

**4.7.****2** A *firm* shall not be regarded as having breached this Bye Law 4 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 this Bye Law 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.

**4.8 When Money Can Be withdrawn from a Client Bank Account**

**4.8.1** Money may be withdrawn from a client bank account for or towards payment of fees payable by the client to the *firm* if:

* the precise amount thereof has been agreed by the client or has been finally determine by a court or arbitrator; or
* 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
* thirty business 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.

**4.8.2** A *firm* may withdraw from a *client bank account*:

1. (i) money, not being c*lients’ money*, paid into a c*lient bank account* for the purpose of opening or maintaining the account; or

ii) *mixed money* which is not *clients’ money*;

(b) money paid into a *client bank account* contrary to this Bye Law or which would have been so but for *Regulation* 4.7.2;

(c) money properly required for a payment to a client;

(d) 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*;

(e) money drawn on a clients’ written authority or in conformity with any written contract between the *firm* and the client;

**4.8.3** Any withdrawal from a c*lient bank account* may only be made where a specific authority in respect of that withdrawal has been signed by a *principal* of the *firm*.

**4.9 MAINTAINING CLIENT RECORDS** **AND RECONCILLIATIONS**

**4.9.1** *Firms* must at all times maintain accurate records and controls to clearly show the money they have received, held, and paid on account of their clients, and the details of any other money dealt with by them through a client account, clearly distinguishing the money of each client from the money of other clients.

**4.9.2** A *firm* must keep Clients’ money records including the notice to the Bank and acknowledgement from the Bank set out in **4.6.1 (4)** The records must have:

* details of all money paid into and out of all client bank accounts;
* entries of all Clients’ money paid direct to the client, or, on the Clients’ instructions, paid to a third party, identifying that person;
* entries of all cheques received and endorsed over by the *firm* to the client or, on the Clients’ instruction endorsed over to a third party, identifying that person; adequate documentation supporting the reasons for cheque endorsement must be retained.
* entries of all electronic transfers received or made of money and transferred direct to the client or, on the Clients’ instructions, transferred to a third party, identifying that person; and
* details of all transactions on each Clients’ ledger account which will easily identify the balance held for each client and which will reconcile to the total or Clients’ money held in the client bank accounts.

**4.9.3.** A *firm* must prepare and at least every three months reconcile:

1. the total balances on all its *clients 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) 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.

**4.9.4** A *firm* must ensure that at all times the total balance held in all the *client bank accounts* is at least equal to the sum of credit balances held for all clients and that no amount may be withdrawn from the *client bank account* for any client which is greater than the credit balance held for that client.

**4.9.5** A *firm* must maintain such records for a period of not less than six years from the date of the last transaction recorded and the *firm* shall hold them available for inspection.

**4.9.6** Significant breaches of the regulationsset out in this section require to be reported by the *firm* to the *Secretary* of the *Institute* as soon as practicable but not later than ten *business days* after the breach has been identified. The *firm* should also provide details of action taken or to be taken to rectify the position.

**4.9.7** The *Secretary* of the *Institute* has the power at any time to inspect and take copies of all documentation in the possession of the *firm* in relation to Clients’ account(s). The *Secretary* has the right to delegate this power.

**4.10** **INTEREST**

**4.10.1** The *firm* and the client must agree by written agreement, arrangements for the payment of interest on *money* held, in advance of accepting any client money. This agreement may be in the engagement letter with the client and must be retained by the *firm* for six years from the date the account is closed**.**

**4.10.2** Subject to 4.10.1, a *firm* must:

1. place clients’ *money* in an interest-bearing account unless the interest earned would not be material*;*
2. ensure that a fair rate of interest 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.

**4.10.3** It shall be a breach of this Bye Law if a *firm* fails to comply with any of the terms of any such agreement as is referred to in 4.10.1

**4.10.4** For the purpose of 4.10.1 moneyheld by a *firm* for two or more clients acting together in one or more transaction may be treated as though held for a single client.

**4.11 RECEIPTS**

**4.11.1** A r

eceipt must be issued by a *firm* when it receives money from a client.

**4.11.2**

A receipt must contain details of the following:

* The name and address of the *firm;*
* The nature and reasons for the transaction;
* The value or amount of the payment;
* The date the payment was received;
* The purpose of the payment;
* If the payment is for onward transmission to an agent, the name and address of that agent; and
* The name and address of the person furnishing the payment.

**4.12 ARRANGEMENTS FOR INCAPACITY OR DEATH**

**4.12.1** A *firm* must have arrangements with another appropriately authorised *firm* to enable the proper distribution or processing of clients’ money in the event of a member’s incapacity or death. This may be the provider of continuity of practice as is required in Bye Law 13 Practice & Audit Regulations.

**4.12.2** When selecting such an alternate, the member should consider:

a) if the alternate is to be a *firm*, whether that firm is itself subject to similar client money requirements, or is otherwise capable of undertaking the task

b) if the alternate is to be an individual, whether they have the appropriate experience to meet these responsibilities.

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

person.

**4.12.3** When selecting such an alternate, the *firm* should be satisfied that the alternate is subject to similar clients’ money requirements and has the experience, integrity and understanding of what is required to take on this responsibility.

**4.13 REGULATORY COMPLIANCE - COMPLIANCE PRINCIPAL REVIEW**

**4.13.1** All *firms* must have a *compliance principal as* appointed under Bye Law 13 Practice & Audit Regulations. In a sole practice this will be the sole practitioner.

**4.13.2** The *compliance principal* shall also take responsibility for the requirements of this Bye Law who will ensure that the *firm* complies with this Bye Law.

**4.13.3** The *compliance principal* on behalf of the *firm* must conduct an annual *compliance review* to confirm the *firm’s* compliance with the *Regulations* set out in this bye law and

to ensure that the systems it has maintained have been adequate to enable it:

1. to comply with this Bye Law; and
2. to carry out the reconciliations in accordance with *4.9.3 to 4.9.5.*

**4.14 INDEPENDENT ACCOUNTANTS’ REPORTS**

4.14.1 The Secretary or any other Regulatory Committee of the Institute has the power at any time to request from a *firm* an independent accountant’s report. The form of the report and the period to be covered shall be determined by the Secretary or committee.

The firm will be responsible for the appointment of the independent accountant.

The Secretary has the right to delegate this power, as they think fit.