

Guidance Note on Rule 11 of the IPReg Code of Conduct

September 2015

Rule 11 states:

In the event that a regulated person receives money from a client, other than by way of payment of fees or disbursements incurred but including money on account (for fees or disbursements) paid up front, they should ensure that such money is held on trust for the client in an account which is entirely separate from the regulated person's or the firm's professional business accounts.

This Rule provides for the proper separation of client and office money.

The primary aim of Rule 11 is to ensure that money paid by clients is only used for its specified purpose.

It is also to reduce the risk that clients lose money which they have paid in advance for services to be performed in the event that the firm to which the money has been paid becomes insolvent before the relevant services have been performed.

Money requested in advance must in principle be treated as client money and always where this is by way of issuing a "pro-forma" invoice.

The requirement for a separate "client" account is a client protection matter to prevent client moneys being co-mingled with office monies. It is not necessary to open a formal "trust" account in order for the requirements of Rule 11 to be met - a second separate business account will satisfy this obligation.¹

Further, we would make the following points:

Advance Payments

¹ This guidance was published on the IP Reg website on 2 February 2015. Please see this link for further details: <http://ipreg.org.uk/pro/practice-development/client-accounts/>

1. In general, if the work has not been completed at the point an invoice is issued to and paid by the client, money received from the client must be treated as client money. This is money received on account for anticipated fees and disbursements. Once the work has been completed, such client money may be moved to the office account.
2. As an exception to this general guidance, payment of an invoice in respect of fixed fees and/or disbursements in advance may nonetheless be treated as office money under the following circumstances:
 - 2.1 The client must have given their specific informed consent. In determining whether informed consent is given, regard must be had to the client's reasonably apparent or expected level of understanding.
 - 2.2 To the extent that professional work paid for in advance is not carried out, fees or disbursements advanced by the client are to be returned.²

Payment for Work Completed

If the work has been completed at the point an invoice is paid by the client, money received from the client is office money.

Money received for paid disbursements is also office money.

1. If the invoice issued to the client includes third party fees and disbursements (including overseas attorneys' fees) for work which has been completed, the money received from the client may still be treated as office money provided that, in the professional opinion of the UK attorney, there are no client protection issues. This will include an assessment by the UK attorney of whether that money should be moved into a client account pending payment of those third parties. The SRA Rules require that such "professional disbursements" should be paid to the third party or otherwise transferred to a client account "without delay" (defined as being no later than the end of the second day following receipt). IPReg is a principles based Regulator and is not as prescriptive, provided that:
 - 1.1 the amount of such funds is not so large as to constitute funding the operations of the firm, nor otherwise supporting its cash flow and
 - 1.2 such funds are not held for an undue or indefinite period.
2. Interim or periodic billing for work in progress is permitted and such money received from the client is office money, provided that the client understands that the totality of the work instructed may not have been completed at that point (with the resulting client protection risk).

² For more information on the issue of informed consent and client/office monies, please see this link: <http://ipreg.org.uk/public/what-does-it-mean-when/how-do-i-keep-on-top-of-the-costs/>