

DRAFT 16/09/02

**FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT, 2000
(No. 41 of 2000)**

**FINANCIAL AND CORPORATE SERVICE PROVIDERS
(CLIENTS' MONEY) REGULATIONS, 2002**

The Minister, in exercise of the powers conferred by section 21 of the Financial and Corporate Service Providers Act, 2000, makes the following regulations -

Citation and commencement. 1. These Regulations may be cited as the Financial and Corporate Service Providers (Clients' Money) Regulations, 2002 and shall come into operation on the day of , 2002.

Interpretation. No. 41 of 2000. 2. In these Regulations -
“the Act” means the Financial and Corporate Service Providers Act, 2000;
“client” means any person or company with whom a licensee agrees by way of business to provide regulated activities;
“client company bank account” means any bank account opened by and in the name of a client company;
“client’s account” means a bank account which is opened by and in the name of a licensee for the holding of client’s money;
“client’s money” means -
(a) money of any currency which, in the course of carrying on its business, a licensee holds or receives on behalf of a

client and may include money which a licensee holds or receives on behalf of a client company but does not include -

(i) money held in a client company bank account;

or

(ii) money invoiced and received by a licensee from a client, as payment in advance for the provision of its services to the client (i.e. fees standing charges), and due and payable at the time of receipt; and

(b) moneys invoiced whether as a disbursement or otherwise and received by a licensee from a client, which are or shall be due to a third party, that party being a creditor of the client and not the licensee;

“holds or receives” means to hold or receive money in the course of carrying on business and having entered or expects to enter into an agreement with a client to hold such money, and holds or receives in The Bahamas or elsewhere in respect of that agreement any money which is not immediately due and payable on demand to the licensee for its own account;

“Inspector” means the Inspector of financial and corporate services appointed under section 12 of the Act;

“licensee” means a person holding a licence under the Act;

“money” means legal tender in The Bahamas or elsewhere or anything, which may be directly converted into legal tender and includes notes and coins, cheques, drafts and electronic transfers;

“recognised bank” means a banking or trust institution licensed

No. 38 of 2000.

under The Banks and Trust Companies Regulation Act, 2000 or, if funds are held in a country outside The Bahamas, a bank duly authorized under the appropriate legislation of that country, provided that the country has signified acceptance of the principles of the International Concordat Banking Supervision issued by the Committee on Banking Regulation and Supervisory Practices and the Commission has no reason to believe that those principles are not being applied;

“regulated activity” means those services referred to in the definition of “financial and corporate services” in section 2 of the Act.

Application.

3. These Regulations shall apply to all licensees under the Act.

Usage of

4.(1) Money held as client’s money ceases to be client’s money if it is paid -

client money.

- (a) to the client;
- (b) into a bank account or other account in the name of the client not being an account which is also in the name of the licensee;
- (c) to a third party at the direction of the client or the client company;
- (d) to the licensee for fees.

(2) A licensee shall instruct all its clients and all other relevant parties with respect to client’s money to make such cheques, drafts and electronic transfers payable to the client account.

Duty to

5. (1) A licensee shall pay all money received by it for or from a **open separate client** into a separate bank account at a recognised bank within or outside **bank account**. The Bahamas on trust for the client entitled to the money.

(2) A licensee shall ensure that -

(a) the title of a client's account includes the words "client's account", or in the case of a bank outside The Bahamas such description in an official language of the country in question as is equivalent to "client's account";

(b) the recognised bank at which the client's account is held acknowledges to the licensee in writing (with a copy addressed to the Inspector) that it understands that all money standing to the credit of the client's account is held by the licensee as trustee and that the bank is not entitled to combine any money in the account with any other account or to exercise any right of lien, set-off or counter-claim against money in the account in respect of any debt owed to it by the licensee.

(3) Where multiple client accounts are established at the same bank, the Inspector will only require one letter from that bank confirming that all accounts designated as "client accounts" will be treated in the same manner.

Payment of money into a client's account. 6. (1) A licensee shall not pay money, which is not client's money, into a client's account unless such money is required -

(a) to maintain the account;

(b) to restore an amount withdrawn in error from the account; or

(c) for the purposes stated in paragraph (2).

(2) A cheque or other payable order containing both client's money and money to which a licensee is beneficially entitled shall first be paid into the client's account and such funds due to the licensee or elsewhere may then be withdrawn.

Withdrawals

7.(1) A licensee shall not withdraw money from a client's account unless -

from a client's account.

(a) it is part of a cheque or other payable order paid into a client's account, as provided for in regulation 6(2);

(b) it is properly required to make a payment on behalf of a client;

(c) it is for a transfer to another client's account or to a bank account in the client's own name;

(d) the money is for or towards payment of the licensee's fees (including expenses) and such withdrawals are provided for in a written client agreement or terms of business;

(e) the licensee has received prior written authority from the client to withdraw such money for the purpose of payment of the licensee's fees.

(2) A licensee shall ensure that there are procedures in place to record the requisite authorities for it to enter into transactions involving the client's money.

**Accounting
for and use
of client's money.**

8. A licensee shall account properly for all client's money and in particular shall ensure that -
- (a) save in accordance with regulation 6(2), client's money and other money do not become intermingled;
 - (b) it can at any time identify and reconcile how much client's money is held on behalf of each client;
 - (c) money held for one client is not withdrawn or transferred to make payment to or on behalf of another client;
 - (d) no client account becomes overdrawn or is used to extend credit to a client.

**Reconciliation
requirements.**

9.(1) A licensee shall, at least once a month, reconcile the balance on each client account as recorded by the licensee on its own ledger, with the balance on that account as set out in the statement issued by the bank.

(2) A licensee shall reconcile the total balances on all client's accounts as recorded by the licensee, with the total of the corresponding credit balances in respect of each of its clients as recorded by the licensee.

(3) Any reconciliation difference shall be investigated and corrected forthwith unless, in the case of paragraph (1), they arise solely as a result of normal timing differences.

(4) For the purpose of paragraph (3), "normal timing differences" means -
timing differences as a result of -

- (a) lodgements recorded as receipts in the cash book but not credited in the bank statement until the following working day; or
- (b) unpresented cheques recorded as payments in the cashbook but not debited in the bank statements.

(5) The licensee shall give written notice and details forthwith to the Inspector if it has not carried out the reconciliation required by regulation 9, or if having done so, it is unable to or does not correct any differences.

Interest 10. (1) A licensee shall pay to its client, interest **payable on** received on **client money** in accordance with the terms set out in the **client money**. client agreement or terms of business.

(2) No interest shall be paid on client money if this is clearly stated in the client agreement or terms of business.

I. A licensee shall inform the Inspector as to what general arrangements it has in place with its overall clients with regard to the payment or non-payment of interest on money held in client accounts.

Made this day of , 2002

Minister responsible for Companies