



**Report to:** APESB

**From:** Institute of Chartered Accountants in Australia and CPA Australia

**Re:** **Accountants' Trust Accounts**

**Date:** **5 May 2008**

### **Introduction**

The APESB previously considered a draft of a revision of the standard dealing with accountants' trust accounts, APS 10. On that occasion, the view was expressed that the matters dealt with in the standard were perhaps better dealt with in the regulations of the joint accounting bodies, and that these matters were of a more technical nature than was typically dealt with in a standard issued by the APESB.

The Institute of Chartered Accountants and CPA Australia are of the view that the case for a standard on accountants' trust accounts is clear, and that the withdrawal of APS 10 without a replacement APESB standard would be a retrograde step.

### **Protection of the Public Interest**

The predominant issue underlying accountants' trust accounts is protection of the public interest. Whereas accountants normally handle financial data and have access to confidential financial information of a client, in the case of trust accounts, it is the client's money itself which is in the possession and control of the accountant. Clients, and the public generally, therefore expect that there will be a rigorous regime in place prescribing the manner in which trust accounts can be conducted and the safeguards that ensure that it is being dealt with correctly.

It was this expectation which led to the existence of a standard when the Institute and CPA Australia issued joint standards binding on their members. In our view, dealing with this matter through the regulations promulgated by the joint accounting bodies, rather than through a standard, would send an undesirable message to the general public, as it could be argued that this is demoting the importance of the issue. It would also have the unwelcome potential to result in variant approaches to the issue between the various bodies, which could be easily avoided by having one standard binding on the members of all three bodies. This after all is part of the *raison d'être* of the APESB.

### **The nature of the trust account issues**

On the issue of whether the matters dealt with in the trust account standard were of a more technical nature than was typically found in other APESB standards, we do not consider that this stands up to analysis. Take for example the requirement to have the trust account audited annually. Whether or not the trust account should be subjected to audit is a policy issue. Whether or not the audit should be annual is also a policy issue. In our view, these policy issues are correctly dealt with by the APESB in a standard.

It may be that the presentation of these policies within the draft that was previously presented to the APESB was such that they were expressed more as technical requirements than as policy directives. This then would be a question of presentation rather than of content.

### **The nature of regulations**

The regulations of the joint accounting bodies typically deal with issues relating to the interaction of the member with the professional body. For example, regulations and/or by-laws issued by the Institute and CPA Australia deal with their education program, admission to membership, advancement to fellowship, issuing of certificates of public practice, membership fees, membership of specialist groups, requirements for ongoing professional development, and practice management issues. In our view, aspects of the interaction of the member with their client or employer are appropriately dealt with by standards.

## Background

Currently, there is no state legislation other than in Queensland to govern how accountants are to manage trust accounts. In the absence of definitive legislation relating specifically to accountants (as in Queensland), the equitable law of trusts applies to the holding and management of trust accounts by accountants. Where members are in a specialised field (including amongst others, liquidators or auditors), other legislation may apply such as the Corporations Act 2001 and the Bankruptcy Act 1966.

In the absence of specific legislation, members of the public who engage professional accountants are entitled to rely on professional accountants to maintain high ethical standards in the course of performing services, including meeting their professional duty to act with integrity and due care and to protect their clients' interests. The New Zealand Institute of Chartered Accountants (NZICA) has identified the need to revise their standard **PS-2 (Revised and Redrafted): Client Monies** stating that "monies held/received on behalf of clients of a member's professional accounting practice has been identified as an area of significant risk. This risk affects not only members and their firms (for example, reputational risk arising from the possibility that member's activities in relation to clients may be contrary to public expectations in relation to the conduct expected of a professional accountant), but also the Institute's reputation as an effective self-regulator of its members' professional conduct and behaviour in the public interest"<sup>1</sup>

## Responsibilities of our standard setter

The primary responsibilities of the APESB are:

- to develop and issue, in the public interest, professional and ethical standards that will apply to the membership of the facilitators,
- to provide a formal and rigorous forum for the consideration, promulgation and approval of professional and ethical standards, which is performed in an open, timely, independent and proactive manner.

Professional and ethical standards include but are not limited to:

- Codes of ethics and conduct
- Other professional statements and guidance notes
- Such other ethical issues or similar matters of interest in respect of the accounting profession

## Need for trust accounts requirements

The current Code adopts a principle-based approach. This approach establishes basic ethical principles governing conduct of professional accountants, which the individual accountant then applies to the particular circumstances using professional judgement. There are, however, both advantages and disadvantages to this approach:

Advantages	Disadvantages
Allows flexibility to react promptly	Lacks objectivity with a risk of inconsistent application of the principles by different accountants or by the same accountant on different occasions
Avoids the rigid legalistic approach	Does not provide certainty regarding expected behaviour

Therefore, for a principles-based system to work satisfactorily it should be supported by:

- Requirements to assist with the consistent application of the principles; and
- Definitive rules in those areas where, at a given point in time, there are specific actions that are required or prohibited

Therefore the principles, guidance and rules should be the backbone of any Code of Ethics. The examples of safeguards and threats are merely an illustration of how the framework is to be applied. The principles-based approach includes giving examples of threats which might arise and appropriate safeguards to deal with them. Such examples are, however, clearly illustrative and not comprehensive. If an accountant were to appear before a disciplinary tribunal charged with a breach of ethical requirements, it would not be a sufficient

<sup>1</sup> New Zealand Institute of Chartered Accountants (NZICA) **BASIS FOR CONCLUSIONS: PS-2 (REVISED AND REDRAFTED): CLIENT MONIES**, September 2007 para 1.

defence to demonstrate that every example of threats and safeguards in the ethical code had been addressed. The accountant would need to be able to demonstrate that, in the particular circumstances under consideration, the fundamental principles had in fact, been observed – a far more rigorous test of compliance. Conversely, it would also be more difficult for a committee/tribunal to determine a breach.

If consistent and certain behaviour is required of professional accountants in relation to client monies, then specific guidance on Trust Accounts is required. This proposed standard provides guidance, consistent with the approach adopted when issuing guidance on areas such as taxation services in **APES 220**, terms of engagement in **APES 305** and quality control for firms in **APES 320**.

### **Specific Standards on Trust Accounts (Client Monies) in other jurisdictions**

<b>Professional Body</b>	
<b>NZICA</b>	<b>Separate Professional Standard PS-2 (Revised and Redrafted) Client Monies September 2007</b>
<b>Hong Kong Institute of Certified Public Accountants</b>	<b>Included in Code of Ethics for Professional Accountants</b>  Requirements in addition to Section 270 are set out in Section 460 "Clients' Monies".

### **Recommendation**

That the APESB review the draft Trust Account standard previously considered to highlight the principles involved in order to develop and issue an Exposure Draft as soon as possible.

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