

The Accounts Rules

Tuesday 5 November 2024

2.30pm to 4.00pm

Candidates are required to answer TWO out of three questions.

Throughout this paper The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 are referred to as the Money Laundering Regulations.

When applicable, an answer should refer to The Accounts Rule identifier.

Question 1

ABC Limited is a long established client. You agree to act for that company in the purchase of commercial property. You take instructions from a director, Mr Jones. He is well known to your firm as you have acted for ABC Limited on his instructions before. You receive from the company £95,000 as a payment to account of various outlays which will be incurred during the transaction and the anticipated fee to be charged.

- a) Are you under any obligation to pay interest to the client on this money? Explain your answer. Identify the Rule under the Accounts Rules.

Halfway through the transaction Mr Jones explains that there has been a change of plan and title will be taken in the name of another company XYZ Limited. XYZ Limited is an historical client of your firm. You have acted for that company before, again on the instruction of Mr Jones who is a director of that company. You complete the transaction in the name of XYZ Limited as instructed, paying outlays when incurred out of the £95,000.

Now that the purchase transaction has concluded you raise a fee note but are aware that subsequently there will remain £5,000 on the client ledger.

- b) Under the Accounts Rules what are your obligations in relation to the client balances and the balance of monies held? Identify the relevant Accounts Rules.

You now realise that money provided by ABC Limited has been used to pay for outlays relating to the purchase of the property.

- c) Has there been a breach of the Accounts Rules? Explain your answer with reference to the Accounts Rules.
- d) With the benefit of hindsight are there any steps which you wish you had taken at the point of instruction by XYZ Limited?
- e) Under the Accounts Rules what is meant by the following terms?
- i) "clients' money"
 - ii) "holding ledger"
 - iii) "client account"; and
 - iv) "balance its books".

The week before the purchase of the commercial property by XYZ Limited was due to complete, Mr Jones explains that his company has recently appointed a new director (Mr Smith) who will take over the instruction of the transaction. You have never met Mr Smith or had prior dealings with him.

- f) Base on the above, were you required to take any steps under the Money Laundering Regulations? Briefly explain your answer.

Question 2

Part 1

The Money Laundering Regulations impose an obligation on legal firms to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject.

- a) List the obligations which legal firms are under when carrying out this risk assessment.

The Money Laundering regulations oblige legal firms to establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing which is identified in their risk assessment.

- b) List what must be included in the policies, controls and procedures.
- c) List the principal obligations imposed by Regulation 21 relative to internal controls.
- d) Write brief notes explaining:
 - i) when you would use enhanced customer due diligence
 - ii) when you would use simplified due diligence
 - iii) the differences between the two.

Part 2

A junior colleague has highlighted a request he received from one of his longer established clients.

The client has requested that the firm holds a sum of money on account, pending the resolution of a current commercial dispute between the client and a third party.

The sum involved amounts to £160,000.

The client has asked that the firm retains that sum of money until the dispute is resolved and that subsequently the funds are released to the party which is successful in this dispute.

Using your knowledge of the Accounts Rules and the Money Laundering Regulations, explain –

- i. what considerations apply; and
- ii. what, if any, restrictions there are upon you accepting and carrying out this client request.

Question 3

Part 1

The Law Society of Scotland (LSS) has set a requirement that regulated members and their firms must know and understand The Accounts Rules.

A standard/common communication approach of a firm is the preparation of a set of Policies & Procedures, with the documented requirements shared with all staff members through induction and regular in-house staff briefings.

As an individual familiar with the LSS rules, you have been designated to review the firm's existing Policies and Procedures and ensure that they are fit for purpose.

There are key features which will be included in every firm's internal documentation to meet the requirements of The Account Rules.

Prior to your review, explain the following key requirements (identify and refer to the applicable LSS rules):-

- i. The Books of Account which must be maintained.
- ii. The Bank Accounts which must be set up in respect of dealing with the money of clients' and others.
- iii. The Rules regarding reconciliation of such accounts and the process which must be followed to complete such reconciliations.
- iv. The frequency of verification of the accounting records
- v. How client balances should be dealt with and what options are available to the firm in tidying up the ledgers.
- vi. The roles and responsibilities within a Practice Unit to ensure that the requirements of the Rules are satisfied.

Part 2

The Money Laundering Regulations (MLR) impose an obligation on legal firms to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject.

- i. What do you understand by the expression "risk-based approach" which firms will adopt when applying the legislation to their business?
- ii. Identify which business services are deemed to be an activity exposed to risk of Money Laundering and those services which are regarded as having a lower risk exposure to Money Laundering.

Which factors influence the determination of risk?

- iii. When might these factors be reviewed? Who might perform the review?

Part 3

List the principal obligations imposed by Regulation 21 of the MLR legislation relative to internal controls.

END OF PAPER