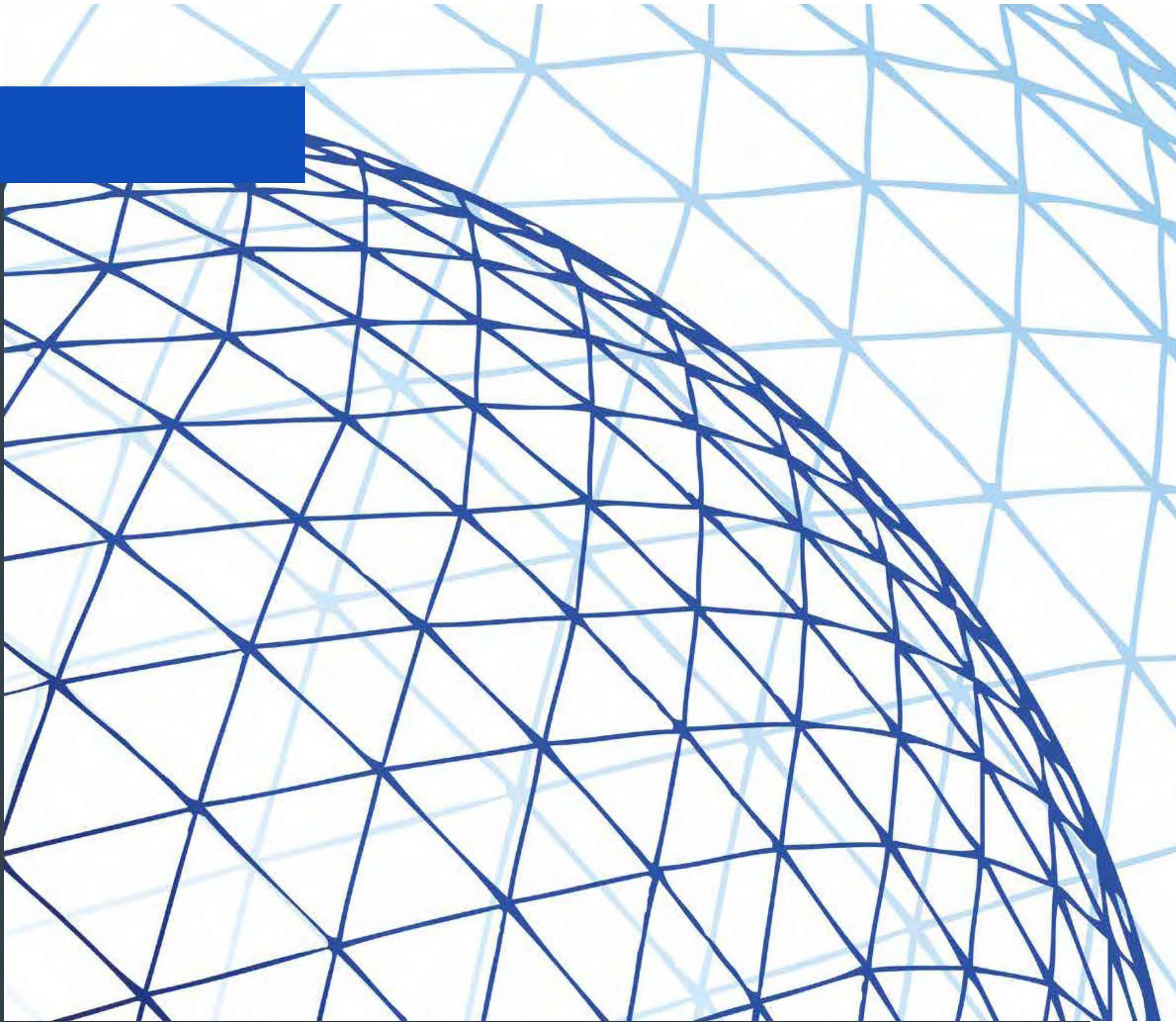
REGULATION



Guidance for RICS-regulated firms regarding the use of appropriately contracted third-party transaction service providers to ensure compliance with RICS' Client money handling, professional standard and RICS Client Money Protection Scheme Rules

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RICS®

Purpose

The purpose of this guidance is to provide information for UK-based RICS-regulated firms that use, or are considering using, third-party transaction service providers (TPTSPs). This will help you understand your obligations, how to comply with them, and manage risks to your firm in accordance with RICS' Client money handling, professional standard (the Standard) and UK RICS Client Money Protection Scheme Rules (Scheme Rules), which apply in the UK. It is also intended to help members of the public to understand the risks and how they are being mitigated.

Background and context

The Standard provides clear rules for RICS-regulated firms to have in place appropriate controls and procedures to keep client money safe. It provides confidence to clients that RICS-regulated firms are operating to high standards.

Under the Standard, it is imperative that RICS-regulated firms hold all client money in a client money account, over which the RICS-regulated firm has exclusive control, at a bank or building society authorised by the relevant banking regulatory body for the jurisdiction.

RICS-regulated firms are increasingly using TPTSPs to act as a service to process client money payment and receipts. These payment processors facilitate transactions between the client and the RICS-regulated firm.

While TPTSPs offer many benefits for today's businesses, including fast and efficient payments, there are also risks that RICS-regulated firms need to take into consideration, for example the security and control of those processes and accounts.

This guidance reinforces the importance of ensuring that RICS-regulated firms comply with their professional requirements that client money is properly protected and that firms are managing their risks appropriately.

What is a third-party transaction service provider?

A TPTSP is an appropriately-contracted company entirely unconnected with the RICS-regulated firm or its principals, that provides an internet-based payment processing service. RICS-regulated firms may use a TPTSP where the contract for these services provides for exclusive control of the client money account and transactions carried out on it, on behalf of the RICS-regulated firm.

What should RICS-regulated firms be doing if they are using third-party transaction service providers?

Further details of client money handling can be found in the Standard. However, to ensure compliance with the Standard, the table below provides a summary of what RICS-regulated firms must do and should also consider when using TPTSPs, to ensure that the regulated firm is in full control of client money.

Considerations	Ensuring compliance
Use of TPTSPs and what you need to tell your clients	If an RICS-regulated firm is using a TPTSP, this must be communicated, with details provided in writing to their client.
Information on how the TPTSP operates and charges	Clients must be provided with clear information in writing regarding how the TPTSP operates; how the movement of funds will take place; any associated fees, charges, commissions or interest; and how those fees are calculated and taken for using that provider. The Standard outlines what RICS-regulated firms must do in relation to holding client money, including obtaining a letter from the bank outlining about how the client account operates, commonly known as a ‘bank operating conditions letter’. If an RICS-regulated firm is using a TPTSP it may not be possible to obtain this letter directly from the bank. the RICS-regulated firm must ask the TPTSP for a copy of this letter from the bank confirming the relevant information for the client accounts, should RICS wish to see it.
Payment controls, balances, reconciliation and reporting	Up-to-date balances and reconciliations between the bank statement, cashbook and client ledger must be readily accessible for the firm from their TPTSP and passed on to the firm’s client upon request. As these reconciliations may be carried out automatically by TPTSP systems and there may not be a cashbook or ledger used as in other traditional reconciliation methods, you should make sure that you maintain an

	overview of the transactions on the account and keep appropriate records to reflect this. You should have published written procedures with information about the reconciliation process. You must keep records and accounts that show all dealings with client money and demonstrate that all money held by the firm is held in a client money account. If using a TPTSP, you should ensure that you can access information on the movement of funds by the TPTSP at any point to fulfil this requirement. As bank statements may not be provided by the TPTSP in the traditional sense, the RICS-regulated firm must ensure that the contract with the TPTSP includes a requirement to provide your firm with all necessary information to fulfil the requirements in the Standard.
Ensuring firms retain exclusive control of client money when using a TPTSP	The RICS-regulated firm must ensure that its contract with the TPTSP does not impact its ability to retain exclusive control over client money. RICS-regulated firms should check and consider how their contract with the TPTSP makes provision for the giving and executing of instructions around the handling of client money. For example, contracts should state that instructions to move funds can only be given by properly authorised people at the firm, and that instructions are executed promptly, accurately and fully, to ensure that exclusive control is always maintained by the RICS-regulated firm.
Any other risks known to the firm regarding the use of a TPTSP	If an RICS-regulated firm is (or becomes) aware of any risks of using a particular TPTSP, this information should be clearly outlined to the client as soon as the firm becomes aware of it. You must inform RICS, the client, and insurers of your firm immediately if client money is misappropriated by any person.
Sharing information with RICS on the use of TPTSPs	You must ensure that all information and records relating to client money are available on RICS' request, including documents relating to the arrangement with TPTSPs (for example your contract with the TPTSP).
Assurances regarding the security of client money	RICS-regulated firms must ensure that there are appropriate safeguards in place, including appropriate controls and procedures with the TPTSPs to give adequate protection for client money. You must ensure that payments into and transfers or withdrawals from a

	client account are in accordance with instructions agreed with the client. If a mistake is made by a TPTSP, this must be remedied promptly on discovery and appropriate steps must be undertaken to avoid future errors. You must inform RICS, your client and the insurers of the RICS-regulated firm immediately if client money is misappropriated by any person.
Status of the TPTSP	RICS-regulated firms must make sure that the TPTSP is holding the client money in an account with a bank or building society authorised by the relevant banking regulatory body for the jurisdiction. You must ensure that the TPTSP is not using an e-money institution (EMI) to hold the client money.
Ensuring that client money is available immediately when held by a TPTSP	If an RICS-regulated firm is using a TPTSP, your contractual arrangements with the TPTSP must ensure that that money held in a client account is immediately available even at the sacrifice of interest, unless other arrangements are in the best interests of the client and the client has given express instructions in writing.
Insurance arrangements	The RICS-regulated firm must ensure that the TPTSP's insurer has sufficient cover in place to cover errors and the misappropriation of client money. You should ensure that your professional indemnity insurer is aware of the arrangements. The RICS-regulated firm will remain responsible for replacing any misappropriated funds.

Conclusions

The RICS Standard and Client Money Protection Scheme do not prohibit the use of TPTSPs and RICS acknowledges the benefits of such providers to RICS-regulated firms. However, it is essential that appropriate controls are in place to ensure that the RICS-regulated firm remains in full, exclusive, control of all money in the client money account, including when transaction services are outsourced to TPTSPs and that clients are aware that monies are being held in this way.

Further help

If you require further assistance, please contact standards@rics.org

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