

GUERNSEY STATUTORY INSTRUMENT

2008 NO. 19

**The Insurance Managers and Insurance Intermediaries (Client Monies) Regulations, 2008**

<i>Made</i>	<i>12 March, 2008</i>
<i>Coming into operation</i>	<i>12 March, 2008</i>
<i>Laid before the States</i>	<i>, 2008</i>

**THE GUERNSEY FINANCIAL SERVICES COMMISSION**, in exercise of the powers conferred upon it by section 18(1)(c) of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>a</sup>, and after consultation with the States of Guernsey Policy Council, the States of Alderney Policy and Finance Committee and the Chief Pleas of Sark General Purposes and Finance Committee, hereby makes the following regulations:-

**Application.**

1. Unless otherwise agreed by the Commission in writing, these Regulations apply to –

- (a) insurance intermediaries, and
- (b) licensed insurance managers when acting as insurance intermediaries,

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<sup>a</sup> Order in Council No. XXII of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

who hold client money, and for the purposes of these Regulations, save for this regulation, "insurance intermediary" shall include licensed insurance managers when acting in accordance with subparagraph (b).

**Client monies.**

2. (1) In the course of carrying out its business, an insurance intermediary may -

- (a) from a client, receive and hold money for premiums that the insurance intermediary will transfer to an insurer, and
- (b) from an insurer, receive claims money or refunded premiums for onward payment to the client

and in these Regulations such money shall be referred to as "client money" or "client monies".

(2) Client monies shall not include monies which are subject to the arrangements described in paragraph 3 of this regulation and in these Regulations such monies shall be referred to as "monies held at the risk of insurers".

(3) For the purposes of these Regulations, monies held at the risk of insurers shall mean monies which are subject to arrangements under which an intermediary has entered into with an insurer whereby –

- (a) the insurance intermediary holds monies as agent for the insurer to the extent that such monies are treated as being received by the insurer when they have been received by the insurance intermediary, and
- (b) claims and premium refunds are only treated as being received by the client when they are paid over to the client.

**Client accounts.**

3. (1) An insurance intermediary shall –
  - (a) open and maintain a separate bank account (a "client account") for client money, and
  - (b) ensure that this account is clearly separate and distinguishable from its own bank accounts.
- (2) For the purposes of these Regulations, a client account is an account –
  - (a) at a bank or building society which holds, for one or more clients, money which is at the risk of the client,
  - (b) in the name of the insurance intermediary,
  - (c) which includes in its title an appropriate description to distinguish the money in the account from the money of the insurance intermediary, and
  - (d) is a current or deposit account.
- (3) Unless otherwise agreed by the Commission in writing, a client account shall be held in a bank or building society licensed by the appropriate regulatory authority in Guernsey.
- (4) An insurance intermediary shall take all necessary measures to protect clients against the risk that it may be unable to transfer -

- (a) premiums to an insurer, or
- (b) claims monies or premium refunds to the client.

(5) An insurance intermediary shall not hold money other than client money in a client account, unless such other money is -

- (a) a minimum sum required to open the account,
- (b) necessary to keep it open,
- (c) interest credited to the account which exceeds the amount due to clients as interest which has not yet been withdrawn by the insurance intermediary,
- (d) commission due to the intermediary, or
- (e) money credited to the client account to make good any shortfall as described in regulation 6(4).

(6) Client money shall be paid into the client bank account no later than the next business day after receipt but where it is not so paid in -

- (a) it must be paid into the account as soon as possible after the omission has been discovered,
- (b) the reason for the failure must be recorded and held on the client file, and
- (c) where the money is not paid in within 3 business days of being received, the relevant client must be informed.

(7) An insurance intermediary must ensure that -

(a) the total amount of client money held for each client in any client account is positive, and

(b) no payment is made from any such account for the benefit of a client, unless -

(i) the client has provided the insurance intermediary with sufficient cleared funds to enable a premium payment to be made, or

(ii) the insurer has provided the intermediary with sufficient cleared funds to pay a claim or refund of premium.

(8) Where client money is received by the insurance intermediary in the form of an automated transfer, the insurance intermediary must -

(a) take reasonable steps to ensure that the money is received directly into the client account, and

(b) if money is received directly into the insurance intermediary's own account, transfer the money into the client account no later than the next business day after receipt.

(9) An intermediary may withdraw commission from the client account where -

- (a) it has received the premium from the client, and
- (b) such a withdrawal is in accordance with an agreement referred to in regulation 4(2).

(10) Where premiums are paid to the insurer, net of any commission due to the insurance intermediary, the insurance intermediary should not transfer that commission into its own account until the premium is paid to the insurer.

**Terms and conditions.**

4. (1) An insurance intermediary shall disclose to its clients that –

- (a) it holds client money in a segregated client account,
- (b) any monies which it may hold are to be designated as monies held at the risk of insurers.

(2) An insurance intermediary shall enter into a terms of business agreement (a "**TOBA**") with each of its clients which sets out the terms and conditions relating to the handling of money contained in the client accounts, including the treatment of interest accruing on client money.

**Interest earned.**

5. (1) Except as provided in paragraph (2), a TOBA between an insurance intermediary and its client must clearly explain and where necessary obtain the client's express consent to the intermediary retaining any interest accruing on client money.

(2) If the insurance intermediary has reasonable grounds to believe that the interest earned for an individual client will be no more than £20 per transaction, it need not obtain the client's consent to it retaining any interest.

**Reconciliations.**

6. (1) Where an insurance intermediary holds clients' money, at least every 25 business days it shall carry out a cash-based or accruals-based reconciliation of the amounts held in its client account against the amounts which should be held for clients.

(2) Where a reconciliation is carried out, an insurance intermediary shall -

(a) match the total monies in its client account by reference to individual clients, and

(b) maintain documentary evidence that –

(i) a reconciliation has been conducted, and

(ii) the reconciliation has undergone an internal peer review by an appropriate person.

(3) When any discrepancy arises as a result of a reconciliation being carried out, the insurance intermediary must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the bank providing the statement or confirmation and that of the insurance intermediary.

(4) If -

(a) an insurance intermediary is unable to resolve satisfactorily any discrepancy arising from a reconciliation, and

- (b) its reconciliation indicates that there is a need to have a greater amount of client money credited to the account than is in fact the case,

the insurance intermediary shall assume, until the matter is finally resolved, that there is a shortfall of client money and pay its own money into the relevant account to ensure the shortfall is met in full.

**Systems and controls.**

7. (1) For the purposes of handling client money, an insurance intermediary shall -

- (a) have and maintain adequate systems and controls to ensure that it is able to monitor and manage its client money transactions, and
- (b) ensure that proper records are made and retained for a period of six years after they were made.

(2) The records in paragraph (1) shall -

- (a) be sufficient to show and explain the transactions and commitments of the insurance intermediary in respect of its client money, and
- (b) include adequate written procedures and evidence that reconciliations are independently reviewed.

**Notification to the Commission.**

8. An insurance intermediary shall -

- (a) advise the Commission at the time of its application for licensing, of its intention to hold client monies,
- (b) notify in advance the Commission of any subsequent change in its intention,
- (c) notify the Commission immediately if it is unable to, or does not, perform the required reconciliations, and
- (d) notify the Commission as soon as possible if it is unable to comply with any of the requirements under these Regulations.

**Interpretation.**

9. (1) For the purposes of these Regulations, unless the context requires otherwise -

**"business day"** means any day except any Saturday, Sunday, Christmas Day, Good Friday or any day appointed as a public holiday by Ordinance of the States of Guernsey, the States of Alderney or, as the case may be, the Chief Pleas of Sark under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>b</sup>,

**"client account"** has the meaning given in regulation 3,

**"client money"** –

- (a) has the meaning given in regulation 1, and
- (b) includes money of any currency which, in the course of carrying on insurance business, an insurance intermediary holds for, receives from, or owes to, a client,

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<sup>b</sup> Ordres en Conseil Vol. XVII, p. 384.

**"Commission"** means the Guernsey Financial Services Commission,

**"insurer"** includes a reinsurer or retrocessionaire,

**"monies held at the risk of insurers"** has the meaning given in regulation 2(2), and

**"TOBA"** has the meaning given in regulation 4(2).

(2) Any reference in these Regulations to an enactment is a reference thereto or from time to time amended, replaced, re-enacted, extended or applied.

(3) The provisions of the Interpretation (Guernsey) Law 1948<sup>c</sup> shall apply to the interpretation of these Regulations throughout the Bailiwick of Guernsey.

**Citation and commencement.**

**10.** These Regulations may be cited as the Insurance Managers and Insurance Intermediaries (Client Monies) Regulations, 2008 and shall come into force on 12<sup>th</sup> March 2008.

Dated this 12<sup>th</sup> day of March 2008

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P Harwood

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

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EXPLANATORY NOTE.

(This note is not part of the Regulations)

These Regulations define the requirements in respect of the handling of client money by insurance intermediaries, and insurance managers acting as insurance intermediaries, licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002.