

## Chapter 5

# Client money: insurance distribution activity

## 5.1 Application

- (1) ■ CASS 5.1 to ■ CASS 5.6 apply, subject to (2), (3) and ■ CASS 5.1.3 R to ■ CASS 5.1.6 R, to a *firm* that receives or holds *money* in the course of or in connection with its *insurance distribution activity*.
- (2) ■ CASS 5.1 to ■ CASS 5.6 do not, subject to (3), apply:
  - (a) to a *firm* to the extent that it acts in accordance with the *client money chapter*; or
  - (b) [deleted]
  - (c) to an *insurance undertaking* in respect of its *permitted activities*; or
  - (d) to a *managing agent* when acting as such; or
  - (e) with respect to *money* held by a *firm* which:
    - (i) is an *approved bank*; and
    - (ii) has requisite capital under article 10(6)(b) of the *IDD*; but only when held by the *firm* in an account with itself, in which case the *firm* must notify the *client* (whether through a *client agreement*, *terms of business*, or otherwise in writing) that:
      - (iii) *money* held for that *client* in an account with the *approved bank* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
      - (iv) as a result, the *money* will not be held in accordance with ■ CASS 5.1 to ■ CASS 5.6.
- (3) A *firm* may elect to comply with:
  - (a) [deleted]
  - (b) ■ CASS 5.1, ■ CASS 5.2 and ■ CASS 5.4 to ■ CASS 5.6 in respect of *money* which it receives in the course of carrying on an activity which would be *insurance distribution activity*, and which *money* would be *client money*, but for article 72D of the *Regulated Activities Order* (Large risks contracts where risk situated outside the EEA); but the election must be in respect of all the *firm's* business which consists of that activity.
- (4) A *firm* must keep a record of any election in (3).

- 5.1.2** **G** A *firm* that is an *approved bank*, and relies on the exemption under **■ CASS 5.1.1 R (2)(e)**, should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time.
- 5.1.3** **R** An *authorised professional firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the rules of its *designated professional body* as specified in **■ CASS 5.1.4 R**, in force on 14 January 2005, must comply with those rules and if it does so, it will be deemed to comply with **■ CASS 5.2** to **■ CASS 5.6**.
- 5.1.4** **R** For the purposes of **■ CASS 5.1.3 R** the relevant rules are:
- (1) If regulated by the Law Society (of England and Wales);
    - (a) the Solicitors' Accounts Rules 1998; or
    - (b) where applicable, the Solicitors Overseas Practice Rules 1990;
  - (2) if regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001;
  - (3) if regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.
- 5.1.4A** **R**
- (1) A *firm* will, subject to (3), be deemed to comply with **■ CASS 5.3** to **■ CASS 5.6** if it receives or holds *client money* and it either:
    - (a) in relation to a service charge, complies with the requirement to segregate such money in accordance with section 42 of the Landlord and Tenant Act 1987 ("the 1987 Act"); or
    - (b) in relation to money which is clients' money for the purpose of the Royal Institution of Chartered Surveyors' Rules of Conduct ("RICS rules") in force as at 14 January 2005, it complies with the requirement to segregate and account for such money in accordance with the RICS Members' Accounts rules.
  - (2) Paragraph (1)(a) also applies to a *firm* in Scotland or in Northern Ireland if in acting as a property manager the *firm* receives or holds a service charge and complies (so far as practicable) with section 42 of the 1987 Act as if the requirements of that provision applied to it.
  - (3) In addition to complying with (1), a *firm* must ensure that an account in which *money* held pursuant to the trust fund mentioned in section 42(3) of the 1987 Act or an account maintained in accordance with the RICS rules satisfies the requirements in **■ CASS 5.5.49 R** to the extent that the *firm* will hold money as trustee or otherwise on behalf of its clients.

**5.1.5** **R** Subject to **■ CASS 5.1.5A R** money is not *client money* when:

- (1) it becomes properly due and payable to the *firm*:
  - (a) for its own account; or
  - (b) in its capacity as agent of an *insurance undertaking* where the *firm* acts in accordance with **■ CASS 5.2**; or
- (2) it is otherwise received by the *firm* pursuant to an arrangement made between an *insurance undertaking* and another *person* (other than a *firm*) by which that other *person* has authority to underwrite risks, settle claims or handle refunds of *premiums* on behalf of that *insurance undertaking* outside the *United Kingdom* and where the *money* relates to that business.

**5.1.5A** **R** **■ CASS 5.1.5 R(1)(b)** and **■ CASS 5.1.5 R(2)** do not apply, and hence *money* is *client money*, in any case where:

- (1) in relation to an activity specified in **■ CASS 5.2.3 R(1)(a)** to **■ CASS 5.2.3 R(1)(c)**, the *insurance undertaking* has agreed that the *firm* may treat *money* which it receives and holds as agent of the *undertaking*, as *client money* and in accordance with the provisions of **■ CASS 5.3** to **■ CASS 5.6**; and
- (2) the agreement in (1) is in writing and adequate to show that the *insurance undertaking* consents to its interests under the trusts (or in Scotland agency) in **■ CASS 5.3.2 R** or **■ CASS 5.4.7 R** being subordinated to the interests of the *firm's* other *clients*.

**5.1.6** **R** Except where a *firm* and an *insurance undertaking* have (in accordance with **■ CASS 5.1.5A R**) agreed otherwise, for the purposes of **■ CASS 5.1** to **■ CASS 5.6** an *insurance undertaking* (when acting as such) with whom a *firm* conducts *insurance distribution activity* is not to be treated as a *client* of the *firm*.

**Purpose**

**5.1.7** **G**

- (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and handling of *client money*. The *rules* in **■ CASS 5.1** to **■ CASS 5.6** also give effect to the requirement in article 10.6 of the *IDD* that all necessary measures should be taken to protect *clients* against the inability of an *insurance intermediary* to transfer *premiums* to an *insurance undertaking* or to transfer the proceeds of a claim or *premium* refund to the insured.
- (2) There are two particular approaches which *firms* can adopt which reflect options given in article 10.6. The first is to provide by law or contract for a transfer of risk from the *insurance intermediary* to the *insurance undertaking* (**■ CASS 5.2**). The second is that *client money* is strictly segregated by being transferred to *client accounts* that cannot be used to reimburse other creditors in the event of the *firm's* insolvency (**■ CASS 5.3** and **■ CASS 5.4** provide different means of achieving such segregation). **■ CASS 5.1.5A R** permits a *firm* subject to certain conditions to treat *money* which it collects as agent of an

*insurance undertaking as client money; the principle of strict segregation is, however, satisfied because such undertakings must agree to their interests being subordinated to the interests of the firm's other clients.*

**5.1.8** **G** A firm which carries on MiFID business or designated investment business in relation to life assurance business may, in accordance with ■ CASS 7.10.3R and in relation to that business only, either comply with ■ CASS 7 or elect to comply with the *insurance client money chapter*.

**5.1.9** **G** Firms are reminded that ■ SUP 3 contains provisions which are relevant to the preparation and delivery of reports by auditors.