

Chapter 5

Client money: insurance distribution activity

5.2 Holding money as agent of an insurance undertaking

Introduction

- 5.2.1** **G** If a *firm* holds *money* as agent of an *insurance undertaking* then the *firm's clients* (who are not *insurance undertakings*) will be adequately protected to the extent that the *premiums* which it receives are treated as being received by the *insurance undertaking* when they are received by the agent and *claims money* and *premium* refunds will only be treated as received by the *client* when they are actually paid over. The *rules* in **■ CASS 5.2** make provision for agency agreements between *firms* and *insurance undertakings* to contain terms which make clear when *money* should be held by a *firm* as agent of an undertaking. *Firms* should refer to **■ CASS 5.1.5 R** to determine the circumstances in which they may treat *money* held on behalf of *insurance undertakings* as *client money*.
- 5.2.2** **G**
- (1) Agency agreements between *insurance intermediaries* and *insurance undertakings* may be of a general kind and facilitate the introduction of business to the *insurance undertaking*. Alternatively, an agency agreement may confer on the *intermediary* contractual authority to commit the *insurance undertaking* to risk or authority to settle claims or handle *premium* refunds (often referred to as "binding authorities"). **■ CASS 5.2.3 R** requires that binding authorities of this kind must provide that the *intermediary* is to act as the agent of the *insurance undertaking* for the purpose of receiving and holding *premiums* (if the *intermediary* has authority to commit the *insurance undertaking* to risk), *claims monies* (if the *intermediary* has authority to settle claims on behalf of the *insurance undertaking*) and *premium* refunds (if the *intermediary* has authority to make refunds of *premium* on behalf of the *insurance undertaking*). Accordingly such *money* is not, except where a *firm* and an *insurance undertaking* have in compliance with **■ CASS 5.1.5A R** agreed otherwise, *client money* for the purposes of **■ CASS 5**.
 - (2) Other introductory agency agreements may also, depending on their precise terms, satisfy some or all of the requirements of the type of written agreement described in **■ CASS 5.2.3 R**. It is desirable that an *intermediary* should, before informing its *clients* (in accordance with **■ CASS 5.2.3 R (3)**) that it will receive *money* as agent of an *insurance undertaking*, agree the terms of that notification with the relevant *insurance undertakings*.

Requirement for written agreement before acting as agent of an insurance undertaking

5.2.3

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- (1) A *firm* must not agree to:
 - (a) *deal in investments as agent for an insurance undertaking in connection with an insurance distribution activity; or*
 - (b) *act as agent for an insurance undertaking for the purpose of settling claims or handling premium refunds; or*
 - (c) *otherwise receive money as agent of an insurance undertaking; unless:*
 - (d) *it has entered into a written agreement with the insurance undertaking to that effect; and*
 - (e) *it is satisfied on reasonable grounds that the terms of the policies issued by the insurance undertaking to the firm's clients are likely to be compatible with such an agreement; and*
 - (f)
 - (i) *(in the case of (a)) the agreement required by (d) expressly provides for the firm to act as agent of the insurance undertaking for the purpose of receiving premiums from the firm's clients; and*
 - (ii) *(in the case of (b)) the agreement required by (d) expressly provides for the firm to act as agent of the insurance undertaking for the purpose of receiving and holding claims money (or, as the case may be, premium refunds) prior to transmission to the client making the claim (or, as the case may be, entitled to the premium refund) in question.*
- (2) A *firm* must retain a copy of any agreement it enters pursuant to (1) for a period of at least six years from the date on which it is terminated.
- (3) Where a *firm* holds, or is to hold, *money as agent for an insurance undertaking* it must ensure that it informs those of its *clients* which are not *insurance undertakings* and whose transactions may be affected by the arrangement (whether in its *terms of business, client agreements* or otherwise in writing) that it will hold their *money as agent of the insurance undertaking* and if necessary the extent of such agency and whether it includes all items of *client money* or is restricted, for example, to the receipt of *premiums*.
- (4) A *firm* may (subject to the consent of the *insurance undertaking* concerned) include in an agreement in (1) provision for *client money* received by its *appointed representative*, field representatives and other agents to be held as agent for the *insurance undertaking* (in which event it must ensure that the *representative* or agent provides the information to *clients* required by (3)).

5.2.4

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Firms are reminded that ■ CASS 5.1.5A R provides that, if the insurance undertaking has agreed in writing, money held in accordance with an agreement made under ■ CASS 5.2.3 R may be treated as client money and may (but not otherwise) be kept in a client bank account.

- 5.2.5

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A *firm* which provides for the protection of a *client*(which is not an *insurance undertaking*) under ■ CASS 5.2 is relieved of the obligation to provide protection for that *client* under ■ CASS 5.3 or ■ CASS 5.4 to the extent of the items of client *money* protected by the agency agreement.
- 5.2.6

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A *firm* may, in accordance with ■ CASS 5.2.3 R (4), arrange for an *insurance undertaking* to accept responsibility for the *money* held by its *appointed representatives*, *field representatives*, and other agents, in which event ■ CASS 5.5.18 R to ■ CASS 5.5.25 G will not apply.
- 5.2.7

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A *firm* may operate on the basis of an agency agreement as provided for by ■ CASS 5.2.3 R for some of its *clients* and with protection provided by a *client money* trust in accordance with ■ CASS 5.3 or ■ CASS 5.4 for other *clients*. A *firm* may also operate on either basis for the same *client* but in relation to different transactions. A *firm* which does so should be satisfied that its administrative systems and controls are adequate and, in accordance with ■ CASS 5.2.4 G, should ensure that *money* held for both types of *client* and business is kept separate.