

## Chapter 5

# Client money: insurance distribution activity



## 5.3 Statutory trust

- 5.3.1** **G** Section 137B(1) of the Act (Miscellaneous ancillary matters) provides that *rules* may make provision which results in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). ■ CASS 5.3.2 R creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of failure of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.
- 5.3.2** **R** A *firm* (other than a *firm* acting in accordance with ■ CASS 5.4) receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:
- (1) for the purposes of and on the terms of ■ CASS 5.3, ■ CASS 5.5 and the *client money (insurance) distribution rules*;
  - (2) subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such) for whom that *money* is held, according to their respective interests in it;
  - (3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* according to their respective interests in it;
  - (4) on the failure of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2) and (3); and
  - (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.
- 5.3.3** **G**
- (1) A *firm* which holds *client money* can discharge its obligation to ensure adequate protection for its *clients* in respect of such *money* by complying with ■ CASS 5.3 which provides for such *money* to be held by the *firm* on the terms of a trust imposed by the *rules*.
  - (2) The trust imposed by ■ CASS 5.3 is limited to a trust in respect of *client money* which a *firm* receives and holds. The consequential and supplementary requirements in ■ CASS 5.5 are designed to secure the proper segregation and maintenance of adequate *client money* balances. In particular, ■ CASS 5.5 does not permit a *firm* to use *client*



*money* balances to provide credit for *clients* (or potential *clients*) such that, for example, their *premium* obligations may be met in advance of the *premium* being remitted to the *firm*. A *firm* wishing to provide credit for *clients* may however do so out of its own funds.