

Chapter 7

Client money rules

7.17 Statutory trust

- 7.17.1** **G** Section 137B(1) of the *Act* (Miscellaneous ancillary matters) provides that rules may make provision which result in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). This section 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.

Requirement

- 7.17.2** **R** Subject to **■ CASS 7.17.3 R** in respect of a *trustee firm*, a *firm* receives and holds *client money* as trustee on the following terms:
- (1) for the purposes of, and on the terms of, the *client money rules* and the *client money distribution and transfer rules*;
 - (2) (a) where a *firm* maintains only a *general pool of client money*, subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such with respect to *client money* received in the course of *insurance distribution activity* and that was opted in to this chapter) for whom that *money* is held, according to their respective interests in it;
 - (b) where a *firm* has established one or more pools of *client money*, subject to (4):
 - (i) the *general pool* is held for all the *clients* of the *firm* for whom the *firm* receives or holds *client money* (other than *clients* which are *insurance undertakings* when acting in regard to *client money* received during *insurance distribution activity* and that was opted in to this chapter) according to their respective interests; and
 - (ii) each *sub-pool* is for the *clients* of the *firm* who are identified as beneficiaries of the *sub-pool* in question, in accordance with **■ CASS 7.19.6 R (2)**, according to their respective interests in it;
 - (3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* with respect of *client money* received in the course of *insurance distribution activity* according to their respective interests in it;

(4) for the payment of the costs properly attributable to the distribution of the *client money* in (2) if such distribution takes place following the *failure* of the *firm*; and

(5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

- 7.17.3** **R** A *trustee firm* which is subject to the *client money rules* by virtue of ■ CASS 7.10.1 R (2) receives and holds *client money* as trustee on the terms in ■ CASS 7.17.2 R, subject to its obligations to hold *client money* as trustee under the relevant instrument of trust.
- 7.17.4** **G** If a *trustee firm* holds *client money*, the *firm* should follow the provisions in ■ CASS 7.10.33 R to ■ CASS 7.10.40 G.
- 7.17.5** **G** The statutory trust under ■ CASS 7.17.2 R does not permit a *firm*, in its capacity as trustee, to use *client money* to advance credit to the *firm's clients*, itself, or any other *person*. For example, if a *firm* wishes to undertake a transaction for a *client* in advance of receiving *client money* from that *client* to fund that transaction, it should not advance credit to that *client* or itself using other *clients' client money* (ie, it should not 'pre-fund' the transaction using other *clients' client money*).