

Guidance Note on Keeping of Separate Client Monies

According to Membership Regulation 3.5, the General Committee is issuing this Guidance Note on Keeping of Separate Client Monies.

1. Both the Minimum Requirements specified by the Insurance Authority and CIB Membership Regulation 5.3.3(a) require an insurance brokers to keep client monies in a bank account separate from his own monies. The purpose of this Guidance Note is to help Members meet the principles behind the legislation and the regulations, given their varying differences in size, complexity and scale of operation, as well as to assist them in designing systems to demonstrate compliance. Insurance brokers are advised to design and implement control procedures to ensure that client monies are identified and kept separately from brokers' own monies, that client monies are used only for the purposes of the client and that all deposits and withdrawals are undertaken only in accordance with the Minimum Requirements. In addition, it is the responsibility of the brokers to ensure that the balances of client monies are reconciled on a sufficiently regular basis. Sufficiently regular basis in this regard will depend on the size and complexity of the broker's operations and further guidance on this is included below.
2. In developing systems of control brokers should have regard to the following control objectives:
 - 2.1 Control objectives over accounting records:
 - (a) Proper recording of movements in client money;
 - (b) Interest credited in accordance with the Minimum Requirements; and
 - (c) Reconciliations carried out on a sufficiently regular basis.
 - 2.2 Control objectives over the proper holding of client monies:
 - (a) Bank accounts opened only with an authorized institution;
 - (b) Consideration is given to the keeping of client monies being diversified where appropriate and relevant. Insurance brokers are reminded that the current limit of compensation per depositor from the Deposit Protection Scheme in Hong Kong is HK\$500,000;
 - (c) Bank accounts include the words "Client Account" in their titles;
 - (d) Written notifications and acknowledgements are sent to and received by the relevant banks in accordance with the Membership Regulations;
 - (e) Systems are adequate to identify all client monies;
 - (f) Systems are adequate to ensure that all client monies are paid in and withdrawals are made only for prescribed purposes, in accordance with client mandates and in compliance with the Minimum Requirements;
 - (g) Systems are adequate to ensure that all client monies are paid in promptly; and no later than by close of business the next business day, unless disposed of in accordance with the Minimum Requirements; and

- (h) Interest payments are correctly calculated by reference to the appropriate terms.
- 2.3 Control objectives over internal and external reconciliation requirements are:
- (a) Regular internal and external reconciliations;
 - (b) Shortfalls are topped up and excesses are withdrawn without delay;
 - (c) Reconciliations are properly prepared and there are adequate explanations given for reconciling items which should be cleared without delay; and
 - (d) Records are retained of the dates and results of the reconciliations.
3. Insurance brokers should reconcile the client monies bank accounts (the “client accounts”) with the ledger balance of client monies as often as necessary. This is known as the external reconciliation. While this will depend on the complexity and size of the broker’s operations, reconciliations with bank accounts should be carried out at least monthly, and completed within 5 business days. If the volume of business is high, the reconciliations may have to be performed more frequently.
4. When considering the above, particular attention should be given to the following matters:
- 4.1 Deposit all client monies into client accounts within the next business day of receipt.
 - 4.2 When receiving mixed remittance, i.e. part client monies and part other monies (e.g. commission), in one payment, deposit the full amount into the client accounts.
 - 4.3 Hold own monies of the insurance brokers in client accounts ONLY when the monies are:-
 - (a) The minimum amount required to open or maintain the client accounts or to settle bank charges arising from the accounts;
 - (b) The interest which has been credited to the client accounts but not yet withdrawn by the insurance brokers; and
 - (c) Part of the mixed remittance held therein temporarily, pending for the regular client money calculation by the insurance brokers.
 - 4.4 Withdraw from client accounts earned brokerage commission ONLY AFTER lodgments have been cleared with proper supporting records.
 - 4.5 Conduct regular client money reconciliations (known as the internal reconciliation) where:
 - (a) The ledger balance of client monies is reconciled with the client money requirement, and
 - (b) Client money requirement shall mean the amount of client monies which the insurance brokers should have in the bank account, i.e. the difference between the “net premium or claims payable in respect of clients under the insurance broking creditors” and the “net premiums or claims receivable in respect of clients under the insurance broking debtors”.

- (i) For example, if net premiums of \$200 have been received from clients and only \$50 have been paid over to insurers, the net premiums receivable under insurance broking debtors will be nil and the net premiums payable under insurance broking creditors will be \$150. Consequently the difference is \$150 and should equate with the amount in the bank (“the client money requirement”).
- (ii) Similarly the net balances in respect of claims payable and receivable will also need to be taken account of in determining the client money requirement.

Such reconciliations should be carried out whenever the ledgers are updated which should be no less than monthly.

- 4.6 Make good the balance of the client accounts within the next business day,
- (a) When a deficiency of funds in client accounts is identified from the client money internal reconciliation by lodging funds,
 - (b) When an excess of funds in client accounts is identified from the client money internal reconciliation by withdrawing funds,
 - (c) By paying insurance brokers’ own monies into or drawing down the excess from the client accounts, after having taken into account the minimum amount required to maintain the client accounts or to settle bank charges arising from the accounts, and
 - (d) In the case of fund deficiency in client accounts, the insurance brokers shall reconcile the client accounts, insurance broking debtors and insurance broking creditors to individual client balances, AND shall report the findings of events leading to the fund deficiency in client accounts to CIB within the next ten (10) business days or on any other date with prior agreement of CIB.
- 4.7 Put in place appropriate policies and procedures, which may include approval by the management of the insurance brokers, to ensure that:-
- (a) No payments from client accounts shall be made until and unless the corresponding receipts have been received and cleared.
 - (b) Payments from client accounts shall be made to the parties to whom such monies are due, that such payments shall be effected when due (unless instructed in writing by the clients) and shall not be routed through other bank accounts of the insurance brokers or other parties unless with proper instructions from the parties such monies are due to.
 - (c) Any advance of credit to clients shall be funded by insurance brokers’ own monies. If the advance of credit is to be paid out from client accounts for premium settlement with insurers, the insurance brokers shall first pay own monies into the client accounts or conduct a client money internal reconciliation to ascertain that there are residual monies of theirs being kept temporarily therein to be made use of.

- (d) Any advance of credit to insurers for claims settlements or premium refunds to clients shall be funded by insurance brokers' own monies, unless there are written agreements between the insurers and the insurance brokers that those sums are to be offset from the premiums due to the insurers in respect of the clients.
 - (e) Any client monies held in a currency different from the insurance brokers' liability to the clients shall be adjusted when client money internal reconciliation is conducted.
 - (f) When an insurance broker advises a client of the number of the insurance broker's "client account" and/or "own account" he must categorically advise his client of the type of funds, either premium or fee payments, which are to be credited to each of those bank accounts so that clients do not inadvertently deposit their monies into the wrong account.
- 4.8 Adopt appropriate accounting policies and procedures to enable reporting of the following in the financial statements, on the balance sheet or in the notes to the accounts, and to facilitate both financial audits by the insurance brokers' auditors and compliance audits by the regulatory body:-
- (a) Bank balance in client accounts, separately from other bank accounts and cash balance of the insurance brokers. In case there were cash holding of client monies received but not yet deposited into client accounts, such cash balance is also to be reported separately from the cash balance of the insurance brokers' own cash.
 - (b) Insurance broking debtors and creditors, separately from other trade debtors and creditors.
 - (c) The insurance broking debtors with breakdowns into:-
 - 1) Net premiums or claims receivable in respect of clients; and
 - 2) Fee or brokerage commissions receivable.
 - (d) The insurance broking creditors with breakdowns into:-
 - 1) Net premium or claim payable in respect of clients; and
 - 2) Fee or brokerage commissions payable.
 - (e) The aging report of the net premiums or claims receivable in respect of clients and of the net premium or claim payable in respect of clients.
 - (f) The amount of own monies of insurance brokers kept in client accounts for maintaining the client accounts or settling bank charges arising from the accounts.
 - (g) DO NOT include client monies as cash for the purpose of Cash Flow Statement.

Note: To the extent that the ledgers do not include the above information, procedures need to be put in place to enable the above items to be extracted for the purpose of financial reporting.

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Annex A: legal provisions in relation to client accounts and client monies extracted from the ICO

Section 69(2)

Before the Insurance Authority authorizes an insurance broker, he is required to satisfy himself that the person complies at least with the minimum requirements specified by the Insurance Authority for-

- (a) qualifications and experience;
 - (b) capital and net assets;
 - (c) professional indemnity insurance;
 - (d) keeping of separate client accounts;
 - (e) keeping proper books and accounts,
- and that the person is a fit and proper person to be an insurance broker.

Section 70(2)

Before the Insurance Authority approves a body of insurance brokers, he is required to satisfy himself that the body has adequate provision in its regulations for members to comply with the minimum requirements specified by the Insurance Authority for-

- (a) qualifications and experience;
 - (b) capital and net assets;
 - (c) professional indemnity insurance;
 - (d) keeping of separate client accounts;
 - (e) keeping proper books and accounts,
- and to ensure that its constituent members are fit and proper persons to be insurance brokers.

Section 71

- (1) An insurance broker who is authorized or a member of an approved body of insurance brokers is required to keep client monies in a bank account separate from his own monies.
- (2) An insurance broker is not allowed to use client monies for any purpose other than for the purposes of the client.
- (3) An insurance broker is entitled to retain the interest that is earned on client monies that he holds unless the insurance broker and the client agree otherwise.
- (4) A lien or claim on client monies made by or through the insurance broker is void unless the monies in the client account are for fees then due and owing to the insurance broker.
- (5) A charge or mortgage on client monies made by the insurance broker is void.

Section 77(12)

An authorized insurance broker who-

- (a) fails to keep client monies in separate accounts; or
 - (b) gives a mortgage or charge over client monies,
- commits an offence and is liable-
- (i) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 5 years; and
 - (ii) on summary conviction to a fine of \$100,000 and to imprisonment for 6 months.

Annex B: provisions in relation to client accounts and client monies extracted from the Minimum Requirements specified by IA

(D) Keeping of Separate Client Accounts

An insurance broker is required to keep client monies in a client account separate from his own monies. He is not allowed to use client monies for any purpose other than for the purposes of the client. The “client account” shall be designated as such and held by the insurance broker for his client:-

- (i) A “client account” means a current or deposit account maintained with a financial institution duly authorized under the Banking Ordinance in the name of the insurance broker in the title of which the word “client” appears.
- (ii) An insurance broker shall keep at least one client account and may keep as many such accounts as he thinks fit.
- (iii) An insurance broker who receives or holds monies on behalf of his client in relation to insurance broking business shall, without delay, deposit such monies into the client account.

There shall also be evidence that the provisions of section 71 of the Ordinance have been notified to and acknowledged by the financial institution with which the “client account” is maintained.

Without limiting the generality of the above requirements, the following are to give brief guidance on the circumstances under which monies shall be deposited into or withdrawn from a client account.

(a) Deposit into client account

These shall be paid into a client account: -

- (i) monies received from client for the purpose of purchasing contracts of insurance;
- (ii) monies received on behalf of client from insurers, reinsurers, insurance intermediaries and any other third parties relating to the settlement of insurance claims;
- (iii) monies received for the purposes of the client which are incidental to the ordinary transactions of insurance broking business; and
- (iv) monies required to be deposited for settlement of bank charges incurred on a client account.

(b) Withdrawal from client account

Withdrawals from a client account shall be restricted to:-

- (i) premium monies required to be paid on behalf of client to insurers, reinsurers or other insurance intermediaries for the purchase of contracts of insurance;
- (ii) claim monies received on behalf of client and required to be paid to the claimant or the person entitled to receive them;
- (iii) payments made for the purposes of the client which are incidental to the ordinary transactions of insurance broking business;
- (iv) monies drawn on client’s written authority;
- (v) interests received from deposits placed with client account;
- (vi) monies required to be withdrawn for settlement of bank charges incurred on a client account; and
- (vii) monies which may by mistake or accident have been paid into the account in contravention of paragraph (D)(a).

For the avoidance of doubt, monies incidental to ordinary insurance broking business, as referred to in para. (D)(a)(iii) and para. (D)(b)(iii) above, are –

- (i) premiums, renewal premiums, additional premiums and return premiums of all kinds;
- (ii) claims and other monies due under contracts of insurance;
- (iii) refunds to clients;
- (iv) policy loans and associated interests;
- (v) fees, charges, levies relating to contracts of insurance; and
- (vi) discounts, commissions and brokerage.

Annex C: provisions in relation to client accounts in the CIB Membership Regulations

5.3 Keeping of Separate Client Accounts

- 5.3.1 A Member shall keep client monies in a Client Account separate from its own monies.
- 5.3.2 A Member shall keep at least one Client Account and may keep as many such Client Accounts as it thinks fit.
- 5.3.3 A Member shall keep written evidence in a form prescribed by the General Committee in accordance with Regulation 3.5 to show that it has notified all financial institutions with which a Client Account is maintained of the provisions set out in section 71 of the Insurance Companies Ordinance namely:
- (a) a Member is required to keep client monies in a bank account separate from his own monies;
 - (b) a Member is not allowed to use client monies for any purposes other than for the purposes of the client;
 - (c) a Member is entitled to retain the interest that is earned on client monies that he holds unless the Member and the client agree otherwise;
 - (d) a lien or claim on client monies made by or through the Member is void unless the monies in a Client Account are for fees then due and owing to the Member; and
 - (e) a charge or mortgage on client monies made by the Member is void,
- and to show that such financial institutions have acknowledged such notification by the Member.
- 5.3.4 A Member shall not use client monies for any purposes other than for the purposes of the client and shall use the monies to make payments to the party to whom such monies are due.
- 5.3.5 A Member who receives or holds monies on behalf of its client in relation to insurance broking business shall, without delay, deposit such monies into a Client Account.
- 5.3.6 A Member will be responsible for any bank charges that may be payable on any Client Account, and not less than quarterly, shall transfer from the Member's own funds, sufficient money to reimburse such charges incurred on a Client Account.
- 5.3.7 Interest receivable on Client Account shall accrue to the Member, and may only be withdrawn from the Client Account once interest receivable has been credited to that Client Account by the bank.
- 5.3.8 Without limiting the generality of the above requirements, Annex B provides a brief guidance on the circumstances under which monies shall be deposited into or withdrawn from a Client Account.

ANNEX B:- Deposits and Withdrawals from Client Accounts

(1) Deposits into a Client Account

Monies received by a Member shall be paid into a Client Account where:

- (a) such monies are received from a client for the purpose of purchasing a contract of insurance;
- (b) such monies are received on behalf of a client from an insurer, a reinsurer, or an insurance intermediary or any other third party in relation to the settlement of an insurance claim;
- (c) such monies are received for the purposes of the client which are incidental to the ordinary transactions of insurance broking business; or
- (d) such monies are required in connection with the settlement of bank charges incurred on a Client Account.

(2) Withdrawals from a Client Account

Withdrawals from a Client Account may only be made in relation to:

- (a) premium monies required to be paid on behalf of a client to an insurer, a reinsurer or other insurance intermediary in connection with a contract of insurance;
- (b) claim monies received on behalf of a client and required to be paid to the claimant or the person entitled to receive such claim monies;
- (c) payments made on behalf of a client which are incidental* to the ordinary transactions of insurance broking business;

- (d) monies withdrawn with the written authority of a client;
- (e) where a Member is entitled to any interest earned on monies held in a Client Account, interest earned on such Client Account; or
- (f) monies debited by the bank to the Client Account for the settlement of bank charge incurred on such Client Account;
- (g) monies which have been deposited into such Client Account by mistake or by accident.

* For the avoidance of doubt, monies deemed to be "incidental to ordinary insurance broking business" are as follows:

- premiums, renewal premiums, additional premiums and return premiums of all kinds;
- claims and other monies due under contracts of insurance;
- refunds to clients;
- policy loans and associated interests;
- fees, charges, levies relating to contracts of insurance; and
- discounts, commissions and brokerage.

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