

Chapter 8: Monies held in a Fiduciary Capacity

8.1 Introduction

8.1.1 This Chapter on monies held in a fiduciary capacity is made by the competent authority pursuant to, and for the purposes of, articles 20, 38 and 43F of the Act. This Chapter determines the kind of protection which persons enrolled under articles 13, 37 and 43E of the Act shall give to monies held in a fiduciary capacity.

8.1.2 Persons enrolled under articles 13, 37 and 43E of the Act are required to maintain a separate account and to credit to such account, and to no other account, all monies which relate to insurance intermediaries transactions of any kind connected with the carrying out of insurance distribution activities and, or reinsurance distribution activities. Monies standing to the credit of the separate account are at all times protected against the risk of enrolled persons' defaults in their own obligations to other parties.

8.2 Persons enrolled under article 13 holding monies in a fiduciary capacity

Application

8.2.1 Section 8.2 of this Chapter shall apply to a person desirous of applying for enrolment and, on continuing basis, a person enrolled in the Agents List, the Managers List or the Brokers List, and carrying out insurance distribution activities and, or reinsurance distribution activities ("an enrolled person"). In the case of a person enrolled in the Managers List, this Chapter shall apply only to a person holding an appointment with authority to enter into contracts of insurance and whose appointment is governed by an agreement which has the effect of an agency agreement and to a person who accepts an appointment from a company enrolled in the Brokers List under article 13 of the Act.

Definitions

8.2.2 For the purposes of Section 8.2 of this Chapter, the following definitions shall apply:

"approved bank" in relation to a business of insurance intermediaries account, means a bank or credit institution:

- (a) licensed to carry on the business of banking under the laws of Malta; or

(b) lawfully permitted to carry on the business of banking in a country outside Malta acceptable to the competent authority provided that the bank or credit institution is of first class standing;

“approved short term assets” shall be construed in accordance with paragraphs 8.2.12 to 8.2.17 of this Chapter;

“business of insurance intermediaries account” shall be construed in accordance with paragraphs 8.2.3 to 8.2.6 of this Chapter;

“motor vehicle licence fee” shall mean the circulation licence issued on a motor vehicle to be driven on the road and which is to be renewed annually.

Requirement to maintain business of insurance intermediaries accounts

8.2.3 Every enrolled person shall establish and maintain one or more bank accounts, for the insurance distribution activities and, or reinsurance distribution activities carried out by the person complying with the provisions of paragraphs 8.2.4 to 8.2.6 of this Chapter.

8.2.4 Each business of insurance intermediaries account shall:

(a) be maintained with an approved bank; and

(b) contain in its title the name of the enrolled person together with the designation “Business of Insurance Intermediaries Account”; and monies standing to the credit of a Business of Insurance Intermediaries Account shall be used solely for the purposes set out in this Chapter.

8.2.5 Every enrolled person opening a Business of Insurance Intermediaries Account with an approved bank shall inform the bank in writing that –

(a) the account shall be designated “Business of Insurance Intermediaries Account” and the title of the account shall contain the name of the enrolled person;

(b) the account is being opened pursuant to, and for the purposes of, this Chapter;

(c) the bank shall renounce, and will not attempt to enforce or execute, any charge, encumbrance, lien or right of set-off or other claims against monies standing to the credit of the account or against any approved short term asset held for the Business of Insurance Intermediaries Account of the enrolled person, or combine the account

with any other account of the enrolled person in respect of a debt owed to it by the enrolled person; and

(d) any charges relating to the account, including tax payable, other than tax payable on interest paid to the account shall not be debited to the account,

and shall, before operating the account, obtain in writing from the bank a statement acknowledging agreement to the matters set out in sub-paragraphs (a) to (d) of this paragraph.

8.2.6 Where an enrolled person holds more than one appointment, it is good practice for such person to maintain a separate business of insurance intermediaries account in respect of each appointment.

All insurance monies are to be paid into business of insurance intermediaries accounts

8.2.7 Every enrolled person shall without delay and, in any event, not later than the next two business days after the day the money is paid to or received by the enrolled person, pay or cause to be paid into a Business of Insurance Intermediaries Account and into no other account:

(a) all monies which are paid to or received by the enrolled person from any source and which relate to insurance intermediaries transactions of any kind connected with the person's insurance distribution activities and, or reinsurance distribution activities including commission, brokerage and document duty payable on policies and endorsement thereon, as the case may be, and motor vehicle licence fees received by the enrolled person in relation to motor insurance business transacted by the enrolled person; and

(b) all monies which are paid to or received by the enrolled person in respect of the disposal of, or otherwise in connection with, approved short term assets.

Only business of insurance intermediaries accounts to be used for payments to insurers, reinsurers and insureds

8.2.8 Every enrolled person shall use a Business of Insurance Intermediaries Account and no other account for payment to an insured or an authorised insurance undertaking, or authorised reinsurance undertaking of all monies due under insurance transactions or reinsurance transactions of any kind connected with the enrolled person's insurance distribution activities and, or reinsurance distribution activities.

8.2.9 For the purposes of paragraph 8.2.8 of this Chapter, “insured” and “authorised insurance undertaking” shall include agents of an insured, or of an authorised insurance undertaking or authorised reinsurance undertaking, and any other person to whom payments are due under or in connection with a contract of insurance.

Purposes for which business of insurance intermediaries accounts may be used

8.2.10 Every enrolled person shall not use a business of insurance intermediaries account for any purposes other than:

- (a) the purposes referred to in paragraphs 8.2.7 to 8.2.9 of this Chapter;
- (b) the receipt of monies necessary for the operation of the Business of Insurance Intermediaries Account;
- (c) the payment of all monies payable by the enrolled person in respect of the acquisition of, or otherwise in connection with, approved short term assets;
- (d) the withdrawal of commission, brokerage or fees which may be made either in cash or by way of transfer to an account in the name of the enrolled person which is not a Business of Insurance Intermediaries Account:

Provided that any withdrawal of commission or brokerage shall be in proportion to the amount of premiums paid to or received by the enrolled person in respect of the insurance transaction to which the commission or brokerage received relates:

Provided further that where the premium is paid to or received by the enrolled person in advance of the date on which the policy is incepted, the commission or brokerage paid to or received by the enrolled person in respect of that policy shall not be withdrawn prior to the inception date of the policy;

- (e) the withdrawal of monies paid into the Business of Insurance Intermediaries Account in error;
- (f) the payment of document duty on policies and endorsement thereon payable under the appropriate law in an amount not to exceed the amount of document duty paid or caused to be paid into the Business of Insurance Intermediaries Account;

(g) the payment of any expenses incurred on behalf of and duly approved in writing by the insurer or reinsurer; and

(h) the payment of motor vehicle licence fees, payable under the appropriate law in an amount not to exceed the amount of motor vehicle licence fees paid or caused to be paid into a Business of Insurance Intermediaries Account.

8.2.11 A debit balance on the business of insurance intermediaries account shall only be of a temporary nature.

Approved short term assets

8.2.12 Subject to paragraph 8.2.16 of this Chapter, an enrolled person is permitted to hold monies standing to the credit of a Business of Insurance Intermediaries Account in, or to purchase out of such monies, any approved short term assets. Such approved short term assets shall be registered in the name of the enrolled person and designated “Business of Insurance Intermediaries Account” and, in so far as the approved short term assets defined in paragraphs 8.2.17(c) or (d) of this Chapter are concerned, the enrolled person shall immediately confirm to the competent authority that these assets have been so designated.

8.2.13 Approved short term assets must be readily realisable, that is to say, within a period of not more than one month, they can be readily and easily converted into, or sold or realised for, cash which can be immediately credited to or is immediately eligible for credit to a Business of Insurance Intermediaries Account.

8.2.14 Monies, other than interest, arising from approved short term assets or their realisation, sale or disposal shall be paid into a Business of Insurance Intermediaries Account and no other account.

8.2.15 For the purposes of paragraphs 8.2.12 to 8.2.17 of this Chapter, unless the context otherwise requires, the expression “Business of Insurance Intermediaries Account” shall include all approved short term assets so designated or held for such Business of Insurance Intermediaries Account in accordance with the provisions of paragraphs 8.2.12 to 8.2.17 of this Chapter.

8.2.16 No monies standing to the credit of the Business of Insurance Intermediaries Account shall be held in any approved short term assets defined in paragraph 8.2.17(a) of this Chapter until the enrolled person shall have informed in writing the approved bank with whom the deposit account is to be opened or from whom the deposit receipt is to be

obtained and forthwith obtain in writing from the bank a statement acknowledging agreement that –

(a) the deposit account and deposit receipt shall be designated “Business of Insurance Intermediaries Account” and the title of the account shall contain the name of the enrolled person;

(b) the approved bank shall renounce, and will not attempt to enforce or execute, any charge, encumbrance, lien or right of set-off or other claims against monies standing to the credit of the deposit account or represented by the deposit receipt; and

(c) any charges relating to the account, including tax payable, other than tax payable on interest earned, shall not be debited to the account.

8.2.17 For the purposes of paragraphs 8.2.12 to 8.2.17 of this Chapter, “approved short term assets” are those assets purchased with or provided from monies drawn from a Business of Insurance Intermediaries Account and which fall into one of the following categories:

(a) deposit accounts and deposits receipts with approved banks;

(b) certificates of deposits of approved banks;

(c) fixed or floating rate interest marketable securities which will mature for repayment within five years from the date of purchase and are issued or guaranteed by the Government of Malta; and

(d) Government of Malta Treasury Bills.

Insurance transactions assets and liabilities

8.2.18 Every enrolled person shall ensure that at all times the value of the insurance transactions assets of its business is not less than the amount of the insurance transactions liabilities of that business.

8.2.19 For the purposes of paragraph 8.2.18 of this Chapter:

“insurance transactions assets” means the aggregate of balances on bank accounts designated “Business of Insurance Intermediaries Account”, approved short term assets designated “Business of Insurance Intermediaries Account” and outstanding debts in respect of insurance transactions (net of provisions for doubtful debts); and

“insurance transactions liabilities” means the aggregate of creditors in respect of insurance transactions, including motor vehicle licence fees payable to the Authority for Transport in Malta.

Accounting records

8.2.20 Every enrolled person shall ensure that its accounting records are kept in such a way as to enable compliance with the relevant provisions of Section 8.2 of this Chapter to be demonstrated at any time.

8.3 Tied Insurance Intermediaries and Ancillary Insurance Intermediaries holding monies in a fiduciary capacity

Application

8.3.1 Section 8.3 of this Chapter applies, on a continuing basis, to:

(a) a person registered in the Tied Insurance Intermediaries Company Register of an authorised undertaking and carrying out tied insurance intermediary activities on behalf of the undertaking, who is authorised to collect and hold monies by the authorised undertaking (the “tied insurance intermediary”); and

(b) a person registered in the Ancillary Insurance Intermediaries Company Register of an authorised undertaking or an insurance broker, as applicable, and carrying out ancillary insurance intermediary activities on behalf of the undertaking or of the enrolled insurance broker, who is authorised to collect and hold monies by the authorised undertaking or the enrolled insurance broker (the “ancillary insurance intermediary”). (*Article 2(1) IIR 7*)

Requirement to maintain Tied Insurance Intermediaries Accounts and Ancillary Insurance Intermediaries Accounts

8.3.2 Without prejudice to the requirements contained in paragraph 8.3.11 of this Chapter and the obligations arising out of Conduct of Business Rules, a tied insurance intermediary shall, if authorised to collect and hold monies by the authorised undertaking, in accordance with the terms of the tied insurance intermediary appointment, and an ancillary insurance intermediary shall, if authorised to collect and hold monies by the authorised undertaking or by the enrolled insurance broker, as applicable, in accordance with the terms of the ancillary insurance intermediary

appointment, open and maintain one or more bank accounts, for the purposes of carrying out tied insurance intermediaries activities or ancillary insurance intermediaries activities, as applicable.

8.3.3 Each tied insurance intermediaries account and ancillary insurance intermediaries account shall:

(b) be maintained with an approved bank; and

(c) contain in its title:

(i) in the case of a tied insurance intermediaries account, the name and enrolment number of the tied insurance intermediary together with the designation “Tied Insurance Intermediaries Account” and the name of the authorised undertaking on whose behalf monies are being collected;

(ii) in the case of an ancillary insurance intermediaries account, the name and enrolment number of the ancillary insurance intermediary together with the designation “Ancillary Insurance Intermediaries Account” and the name of the authorised undertaking or of the enrolled insurance broker, as applicable, on whose behalf monies are being collected.

8.3.4 Monies standing to the credit of a Tied Insurance Intermediaries Account or of an Ancillary Insurance Intermediaries Account shall be used solely for the purposes set out in paragraphs 8.3.2 to 8.3.10 of this Chapter.

8.3.5 Every tied insurance intermediary opening a Tied Insurance Intermediaries Account and every ancillary insurance intermediary opening an Ancillary Insurance Intermediaries Account with an approved bank, shall inform the bank in writing that –

(a) the account shall be designated:

(i) “Tied Insurance Intermediaries Account” and the title of the account shall contain the name and enrolment number of the tied insurance intermediary and the name of the authorised undertaking on whose behalf monies are being collected;

(ii) “Ancillary Insurance Intermediaries Account” and the title of the account shall contain the name and enrolment number of the ancillary insurance intermediary and the name of the authorised undertaking or of the enrolled insurance broker, as applicable, on whose behalf monies are being collected;

(b) the account is being opened pursuant to, and for the purposes of, Section 8.3 of this Chapter;

(c) the bank shall renounce, and will not attempt to enforce, or execute, any charge, encumbrance, lien, or right of set-off or other claims against monies standing to the credit of the account, or combine the account with any other account of the tied insurance intermediary in respect of a debt owed to it by the tied insurance intermediary, or with any other account of the ancillary insurance intermediary in respect of a debt owed to it by the ancillary insurance intermediary, as applicable; and

(d) any charges, relating to the account, including tax payable, other than tax payable on interest paid to the account, shall not be debited to the account,

and shall, before operating the account, obtain in writing from the bank a statement acknowledging agreement to the matters set out in sub-paragraphs (a) to (d) of this paragraph.

8.3.6 Where a tied insurance intermediary is registered in the Tied insurance Intermediaries Company Register of more than one authorised undertaking, or where an ancillary insurance intermediary is registered in the Ancillary Insurance Intermediaries Company Register of more than one authorised undertaking, the tied insurance intermediary and the ancillary insurance intermediary shall maintain a separate Tied Insurance Intermediaries Account or Ancillary Insurance Intermediaries Account, as applicable, in respect of each authorised undertaking on whose behalf the tied insurance intermediary or the ancillary insurance intermediary is authorised to collect and hold money.

All insurance monies are to be paid into Tied Insurance Intermediaries Accounts or Ancillary Insurance Intermediaries Accounts

8.3.7 A tied insurance intermediary and an ancillary insurance intermediary shall, without delay and in any event, not later than the next two business days after the day the money is paid to, or received by the tied insurance intermediary or by the ancillary insurance intermediary, pay or cause to be paid into a Tied Insurance Intermediaries Account or into an Ancillary Insurance Intermediaries Account, as applicable, and in to no other account:

(a) all monies which are paid to or received by the tied insurance intermediary or by the ancillary insurance intermediary, other than for cheques issued in the name of the insurer or of the enrolled insurance broker, from prospective policyholders or policyholders and which relate to insurance transactions connected with tied insurance intermediaries activities or ancillary insurance intermediaries activities, as applicable, including commission; and

(b) motor vehicle licence fees received by the tied insurance intermediary or by the ancillary insurance intermediary in relation to motor insurance business.

Only Tied Insurance Intermediaries Account or Ancillary Insurance Intermediaries Account to be used for payments in relation to insurance transactions.

8.3.8 A tied insurance intermediary shall use a Tied Insurance Intermediaries Account and no other account, for payment to his principal of all monies due under insurance transactions connected with tied insurance intermediaries activities.

8.3.9 An ancillary insurance intermediary shall use an Ancillary Insurance Intermediaries Account, and no other account, for payment to the authorised undertaking or the enrolled insurance broker appointing it of all monies due under insurance transactions connected with ancillary insurance intermediaries activities.

8.3.10 For the purposes of paragraphs 8.3.2 to 8.3.9 of this Chapter, “approved bank” in relation to a Tied Insurance Intermediaries Account and Ancillary Insurance Intermediaries Account, means a bank or credit institution licensed to carry on business of banking under the laws of Malta.

Receipts

8.3.11 Without prejudice to the obligations arising out of Conduct of Business Rules, a tied insurance intermediary and an ancillary insurance intermediary shall, if authorised to collect money in accordance with the terms of the tied insurance intermediary appointment or of the ancillary insurance intermediary appointment, respectively –

(a) keep a proper account of all financial transactions with a prospective policyholder which involve the transmission of money in respect of insurance;

(b) remit any such monies so collected in strict conformity with the tied insurance intermediaries appointment or with the ancillary insurance intermediary appointment, respectively.

8.4 Compliance with Section 8.3 of this Chapter

8.4.1 The responsibility for enforcing compliance with Section 8.3 of this Chapter resides primarily with:

(a) the authorised undertaking appointing, registering and enrolling persons as a tied insurance intermediary to carry out tied insurance intermediaries activities on its behalf; and

(b) the authorised undertaking or the enrolled insurance broker, as applicable, appointing, registering and enrolling persons as an ancillary insurance intermediary to carry out ancillary insurance intermediaries activities on its behalf.

8.4.2 The said responsibility derives from articles 37(9) and 43E(11) of the Act, respectively.