

Insurance Intermediaries Rule 13 of 2007

Monies Held in a Fiduciary Capacity

Rule pursuant to article 20 of the Act

1. (1) This Insurance Intermediaries Rule on monies held in a fiduciary capacity by persons enrolled in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 20 of the Act.

(2) This Rule shall come into force on the 1st January 2007.

Application

2. This Rule applies to a person desirous of applying for enrolment and, on continuing basis, a person enrolled, in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (the “enrolled person”). In the case of persons enrolled in the Managers List, this Rule applies 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.

Scope

3. The scope of this Rule is to determine the kind of protection which enrolled persons should give to monies held in a fiduciary capacity. In this respect, enrolled persons are required to credit to a business of insurance intermediaries account and to no other account all monies which relate to insurance intermediaries transactions of any kind connected with the carrying out of insurance intermediaries activities. Monies standing to the credit of a business of insurance intermediaries account are at all times protected against the risk of enrolled persons’ defaults in their own obligations to other parties.

Definitions

4. In this Rule, unless the context otherwise requires -

“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 Authority provided that the bank or credit institution is of first class standing;

“approved short term assets” shall be construed in accordance with article 9 of this Rule;

“business of insurance intermediaries account” shall be construed in accordance with article 5 of this Rule;

“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

5. (1) Every enrolled person shall establish and maintain one or more bank accounts, for the insurance intermediaries activities carried on by the person, complying with the following provisions of this article.

(2) Each business of insurance intermediaries account shall –

(a) be maintained with an approved bank; and

(b) subject to article 12 of this Rule 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 Rule.

(3) 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 Rule;

(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 subparagraphs (a) to (d) of this paragraph.

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

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

6. 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 intermediaries 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 and insureds

7. (1) Every enrolled person shall use a Business of Insurance Intermediaries Account and no other account for payment to an insured or an insurance undertaking of all monies due under insurance transactions of any kind connected with the enrolled person's insurance intermediaries activities.

(2) For the purposes of this article, "insured" and "insurance undertaking" include agents of an insured or insurance 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. (1) Every enrolled person shall not use a business of insurance intermediaries account for any purpose other than –

(a) the purposes referred to in articles 6 and 7 of this Rule;

(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 inceptioned, 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; 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.

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

Approved short term assets

9. (1) Subject to the provisions of article 12 of this Rule and paragraph (5) of this article, 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 sub-paragraphs (c) or (d) of paragraph (6) of this article are

concerned, the enrolled person shall immediately confirm to the Authority that these assets have been so designated.

(2) 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.

(3) 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.

(4) For the purposes of this article, 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 this article.

(5) No monies standing to the credit of the Business of Insurance Intermediaries Account shall be held in any approved short term assets defined in sub-paragraph (a) of paragraph (6) of this article 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.

(6) For the purposes of this article “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

10. (1) 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.

(2) For the purposes of paragraph (1) of this article -

“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

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

Repeals and Savings

12. (1) Without prejudice to article 4(2) of the Preliminary provisions, and saving the provisions of paragraph (2) of this article, Insurance Intermediaries Directive 13 of 1999 – Monies Held in a Fiduciary Capacity, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder or under Insurance Directive 11 of 1999 – Monies Held in a Fiduciary Capacity, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order were taken or commenced under this Rule.