



Jersey

**FINANCIAL SERVICES (GENERAL
INSURANCE MEDIATION BUSINESS
(CLIENT ASSETS)) (JERSEY) ORDER 2005**

Official Consolidated Version

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FINANCIAL SERVICES (GENERAL INSURANCE MEDIATION BUSINESS (CLIENT ASSETS)) (JERSEY) ORDER 2005

THE ECONOMIC DEVELOPMENT COMMITTEE, in pursuance of Articles 20 and 42 of the [Financial Services \(Jersey\) Law 1998](#) and on the recommendation of the Jersey Financial Services Commission, orders as follows –

Commencement [\[see endnotes\]](#)

PART 1

PRELIMINARY

1 Interpretation

In this Order, unless the context otherwise requires –

“approved bank”, in relation to an insurance broking account, means –

- (a) if the account is opened at a branch of a bank which is a branch in Jersey – a person registered under the [Banking Business \(Jersey\) Law 1991](#); and
- (b) if the account is opened at a branch of a bank which is a branch outside Jersey –
 - (i) an institution authorized under the Banking Act 1987 of the United Kingdom, as in force from time to time,
 - (ii) a credit institution (as defined in Directive No. 77/780/EEC, the First Banking Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions) established in any other Member State of the European Community and duly authorized by the relevant supervisory authority in that Member State,
 - (iii) an institution authorized under the Banking Act 1975 of the Isle of Man, as in force from time to time,
 - (iv) an institution authorized under the Banking Supervision (Bailiwick of Guernsey) Law 1994, as in force from time to time,

- (v) a building society registered and incorporated under the Building Societies Act 1986 of the United Kingdom, as in force from time to time, which operates a deposit-taking business (within the meaning of the Banking Act 1987 of the United Kingdom, as in force from time to time) without restriction,
- (vi) a bank which is a company in the same group as an institution described in paragraph (a) or (b)(i) to (iv), or
- (vii) any deposit-taking business within the meaning of the [Banking Business \(Jersey\) Law 1991](#) that is approved by the Commission;

“bank” means any institution which lawfully carries on deposit-taking business in the country in which it was established;

“business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day appointed as a public holiday or bank holiday under Article 2 of the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#);

“client”, in respect of a registered person, means –

- (a) a person who has entered into an agreement for the provision of services to be provided by the registered person when carrying on general insurance mediation business; or
- (b) a person who has received or may receive the benefit of services to be provided or arranged by the registered person when carrying on general insurance mediation business;

“default” means the commencement of –

- (a) an application for a declaration under the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#); or
- (b) liquidation or any insolvency proceedings in any jurisdiction;

“designated account” means an insurance broking account which –

- (a) includes either words in its title indicating that it is a designated account or other information which sufficiently distinguishes it as such; and
- (b) only contains the money of a single client (or, in the case of 2 or more clients who open an account jointly, those clients) whose written consent to the use of the bank with which the insurance money is to be held has been obtained;

“insurance broking account” has the meaning assigned by Article 7(2);

“insurance company” has the meaning assigned by Article 1 of the [Insurance Business \(Jersey\) Law 1996](#);

“insurance intermediary” means an intermediary in respect of insurance;

“insurance money” has the meaning assigned by Article 3;

“intermediary”, in relation to a registered person, means a person –

- (a) to whom any insurance money held by the registered person has been passed for the carrying out of transactions on behalf of clients of the registered person; or
- (b) from whom any money is owed to the registered person which, once received by the registered person, will be insurance money for the carrying out of transactions on behalf of clients of the registered person;

“Law” means the [Financial Services \(Jersey\) Law 1998](#);

“money” includes cheques and other payable orders of any currency;

“policy document” includes policy wordings, schedules, certificates or similar documents evidencing a client’s entitlement to a benefit or right under a general insurance contract;

“pooling event” has the meaning assigned by Article 15;

“protected account” means an insurance broking account which is not a designated account;

“registered person” means a person registered under the Law to carry on general insurance mediation business.

PART 2

INSURANCE MONEY

2 Application of this Part

- (1) This Part applies to every registered person who holds money on behalf of his or her clients in an account with himself or herself.
- (2) This Part does not apply to a designated account to the extent provided by Article 12.

3 Meaning of “insurance money”

- (1) Subject to paragraph (2), insurance money is money which a registered person, in the course of carrying on general insurance mediation business holds or receives (whether in Jersey or not) in respect of any general insurance contract entered into, or to be entered into, with or for a client, which money is –
 - (a) premiums, additional premiums or return premiums;
 - (b) claims or other monies due under contracts of insurance;
 - (c) refunds or salvages;
 - (d) fees, charges, taxes or similar fiscal levies relating to general insurance contracts;
 - (e) all forms of reserves under general insurance contracts and any adjustment to them; or
 - (f) discounts, commissions or brokerage.
- (2) Cheques or payable orders made payable to a client by a third party or to a third party by a client are not insurance money.
- (3) For the purposes of this Article money is only to be regarded as due and payable in respect of fees or commissions payable to the registered person if it may be withdrawn under Article 9.

4 Money to be held in approved bank unless waiver applies

- (1) A registered person shall ensure that all insurance money in respect of his or her clients shall, subject to this Order, be held at an approved bank.
- (2) Paragraph (1) does not apply in relation to insurance money if the Commission waives under paragraph (3) the requirement in relation to insurance money received by a registered person.
- (3) The Commission may, by notice in writing to a registered person, waive the requirement for the registered person to hold insurance money with a bank that is an approved bank, if –
 - (a) the insurance money relates to one or more general insurance transactions which are subject to the law or market practice of a jurisdiction outside Jersey;
 - (b) because of the applicable law or market practice of an overseas jurisdiction, it is not possible to hold insurance money in an insurance broking account with an approved bank; and
 - (c) the registered person –
 - (i) obtains the client's informed consent, or
 - (ii) notifies each relevant client and has a client agreement, or terms of business, which adequately explain that –
 - (A) the insurance money will be held with a bank that is not an approved bank,
 - (B) the legal and regulatory regime applying to the bank with which the insurance money will be held will be different from that of an approved bank and in the event of the failure of the bank the insurance money may be treated differently than it would be if the insurance money were held by an approved bank, and
 - (C) the insurance money is held in a designated account at the bank.
- (4) A waiver under paragraph (3) –
 - (a) shall specify the registered person to whom, and the bank to which, the waiver relates; and
 - (b) shall be subject to the following conditions –
 - (i) the money shall be held with the bank in the overseas jurisdiction,
 - (ii) the registered person shall hold money with the bank for no longer than is necessary to effect transactions,
 - (iii) the insurance money shall be held in a designated account,
 - (iv) any other conditions that the Commission specifies from time to time in the waiver or by notice in writing to the person to whom the waiver relates.
- (5) The Commission may, by notice in writing to a registered person to whom a waiver has been issued, revoke the waiver, if the Commission is satisfied that –
 - (a) the requirements of paragraph (3) for the issue of the waiver to the person are no longer satisfied; or

- (b) a condition specified in or under paragraph (4) has not been complied with.

5 Segregation of insurance money

A registered person shall pay into insurance broking accounts all insurance money which the registered person holds or receives.

6 Accounting for and use of insurance money

A registered person shall account properly and promptly for insurance money and, in particular, shall ensure that –

- (a) except as permitted by this Order, insurance money and other money do not become mixed; and
- (b) individual transactions can be accurately identified and traced.

7 Insurance broking accounts

- (1) A registered person authorized to hold insurance money shall, before receiving insurance money, open one or more insurance broking accounts for the purpose of receiving that money.
- (2) An insurance broking account is –
 - (a) an account at an approved bank; or
 - (b) if the Commission has issued a waiver under Article 4 in relation to insurance money – an account containing the insurance money at the bank specified in the waiver,which account –
 - (i) holds the money of one or more clients;
 - (ii) is in the name of a registered person but has a title which sufficiently distinguishes it from any accounts holding funds belonging to the registered person;
 - (iii) includes either words in its title indicating that it is an insurance broking account or other information which sufficiently distinguishes it as an account containing insurance money; and
 - (iv) is a current or deposit account (or, if the bank is an approved bank that is a building society within paragraph (b)(v) of the definition of “approved bank” in Article 1, is a deposit (and not a share) account).
- (3) Except as provided by paragraph (4), the insurance broking account shall not be operated until the registered person has obtained from the bank in which the account is held an undertaking, addressed to the registered person, that –
 - (a) all money standing to the credit of the account is and will be held by the registered person as trustee;
 - (b) interest earned on the account will be credited to that account or to another insurance broking account;

- (c) the bank is not, and will not be, entitled to combine the account with any other account or to exercise any right of set-off or counterclaim or any security interest against money in the account in respect of any debt or other obligation owed to the bank by the registered person; and
 - (d) the title of the account sufficiently distinguishes it as an account containing insurance money and sufficiently distinguishes it from any account containing money belonging to the registered person.
- (4) The Commission may, by notice in writing to a registered person, waive the requirement to obtain an undertaking if –
 - (a) the law to which the approved bank is subject makes it impossible or impracticable to give the undertaking; or
 - (b) there are other exceptional circumstances.
- (5) A waiver under paragraph (4) shall be subject to any conditions that the Commission specifies from time to time in the waiver or by notice in writing to the person to whom the waiver relates.
- (6) If the Commission has waived the requirement to obtain an undertaking, the registered person shall explain to his or her clients the nature of the risks to which they may be subjected because there is no such undertaking.
- (7) If a registered person transacting insurance mediation business intends to pass insurance money to another insurance intermediary located outside Jersey, the registered person shall advise the client that –
 - (a) insurance money may be passed to another insurance intermediary outside Jersey; and
 - (b) if the money is so passed, the legal and regulatory regime applying to the insurance intermediary with which the insurance money will be held will be different from that of an insurance intermediary located within Jersey and in the event of the failure of the insurance intermediary the insurance money may be treated differently than it would be if the insurance money were held by an insurance intermediary in Jersey.
- (8) A client to whom advice is given under paragraph (7) by a registered person may notify the registered person that the client does not wish the client's money to be passed to another insurance intermediary in a particular jurisdiction.

8 Payments into insurance broking account

A registered person shall ensure that insurance money received by the registered person shall be paid into an insurance broking account as soon as possible and in any event no later than 3 business days after the day on which the money is received.

9 Payments out of insurance broking account

A registered person may withdraw money from an insurance broking account in relation to a client only if –

- (a) it is not insurance money or it has been banked in error;
- (b) it is properly required for immediate payment to or on behalf of the client or the insurance company in respect of the client;

- (c) it is for or towards payment of the fees or commission owed to the registered person by the client; or
- (d) it is properly transferred to another insurance broking account or into a bank account in the client's own name that is not an account which is also in the name of the registered person.

10 Interest on insurance money

A registered person shall ensure that the name of the person who is to receive any interest payments that may be received by the registered person in relation to insurance money in respect of a client is specified in an agreement in writing between the client and the registered person.

11 Reconciliation of accounts

- (1) A registered person shall, at least once each month, reconcile the balance on each insurance broking account, as recorded by the registered person, with the balance on that account as set out in the statement issued by the bank covering the period in respect of which the reconciliation is made.
- (2) The reconciliation referred to in paragraph (1) shall be performed within 10 business days of the date to which the reconciliation relates.
- (3) Any differences arising in a reconciliation under paragraph (1) shall be corrected immediately unless they arise as a result of differences in timing between the accounting and settlement systems of the registered person and the bank.

12 Designated accounts

- (1) A registered person shall not charge a client for any interest, fee or other payment that is required to be paid because the client's designated account is overdrawn, unless the registered person has obtained the written consent from the client to that account being overdrawn.
- (2) Article 11(1) shall not apply to a designated account if –
 - (a) the client of that account has given his or her written consent to that paragraph not applying in relation to him or her; and
 - (b) the registered person has taken the steps that are necessary to ensure that the balance on that account as set out in the statement issued by the bank agrees with what the registered person reasonably believes the balance should be.
- (3) A registered person whose client has a designated account shall inform the client that the account does not have the protection of Part 3.

PART 3

DEFAULT

13 Application of Part 3

This Part only applies to protected accounts.

14 Creation of statutory trust

- (1) If insurance money is held by a registered person in a protected account in the course of general insurance mediation business, the insurance money is held on trust in accordance with this Part –
 - (a) for the clients for whom the money is held, according to their respective shares in it;
 - (b) for the insurance companies and insurance intermediaries for whom the money is held, according to their respective shares in it; and
 - (c) after all valid claims under sub-paragraphs (a) and (b) have been met, for the registered person himself or herself.
- (2) If money is held on trust under this Part, the [Trusts \(Jersey\) Law 1984](#) shall, subject to this Part, have effect in relation to the money.

15 Meaning of “pooling event”

- (1) A pooling event consists of the occurrence of any of the following –
 - (a) the default of the registered person;
 - (b) the default of any bank with which any insurance money held by the registered person is deposited;
 - (c) the default of an intermediary or insurance company;
 - (d) the coming into force of a direction by the Commission under Article 23 of the Law in respect of all insurance money held by the registered person, unless the direction states otherwise.
- (2) However, a pooling event shall be deemed not to have occurred if, immediately after the default of a bank or an intermediary, the registered person repays to his or her clients, or pays into the insurance broking accounts of his or her clients, an amount equal to the amount of insurance money held on behalf of those clients with that bank or by that intermediary.
- (3) If –
 - (a) a registered person has placed insurance money with, or passed insurance money to, a bank, intermediary, insurance company or third party;
 - (b) the insurance money has not been returned to the registered person or the person’s client; and
 - (c) the bank, intermediary, insurance company or third party fails,

the registered person shall, as soon as reasonably practicable after becoming aware of the failure, notify the Commission as to the failure and whether or not the registered person intends to make good any shortfall that has arisen or that may arise.

16 Destination of insurance money on pooling event

- (1) If a pooling event occurs –
 - (a) except in so far as money is received after the pooling event, the power of a registered person to pay money into and out of protected accounts in which insurance money is held is suspended; and
 - (b) subject to Article 17, money held in all the registered person's protected accounts is pooled and shall be made available to meet the claims of clients in respect of whom insurance money is, or should be, held in those protected accounts, so that each client receives the same percentage of the amount of the client's claim.
- (2) If, at the time when a pooling event occurs, a registered person has paid an uncleared cheque or other payable order into a protected account, when such cheque or order is cleared the amount credited in respect of it shall be pooled in accordance with paragraph (1)(b).
- (3) If, at the time when a pooling event occurs, insurance money from a protected account is in the hands of an intermediary, the insurance money shall, on its return to the protected account, be pooled in accordance with paragraph (1)(b).
- (4) If insurance money referred to in paragraph (3) cannot be returned until one month after the pooling event, the registered person may make distributions from the account before that date if he or she makes provision for the possibility of such money not being returned.
- (5) Without prejudice to any claim of any other person arising under this Order, if a surplus remains in the pool created under paragraph (1)(b), the surplus shall form part of the assets of the registered person.
- (6) If a registered person receives money from a client after a pooling event which, but for that event, would fall to be paid into a protected account –
 - (a) the registered person shall ensure that the money is placed in a new insurance broking account opened after that pooling event; and
 - (b) the money shall not be pooled with the money held in the registered person's protected accounts at the time of the pooling event.

17 Money held by third parties

If insurance money is held by a bank, an insurance company or an intermediary, who defaults or, following a pooling event, fails to recognize that the money is held on trust in accordance with this Part –

- (a) the money shall be pooled separately and the registered person shall ensure that –
 - (i) the money is made available to satisfy the separate claims of the separate clients so that each client receives the same percentage of the amount of the client's claim, and

- (ii) after the claims described in sub-paragraph (i) have been satisfied, the money is paid into the pool created under Article 16(1)(b); and
- (b) the registered person shall apply the pool created under Article 16(1)(b) –
 - (i) to meet any claims of separate clients that are not separate claims and the claims of other clients (all ranking equally), and
 - (ii) after the claims described in sub-paragraph (i) have been satisfied, to meet any unsatisfied separate claims of separate clients.

18 Default officer

- (1) The Commission may appoint a person, to be known as the default officer, to administer the application of this Part in relation to a registered person in the event of the default of the registered person or the coming into force of a direction by the Commission in respect of all insurance money held by that person.
- (2) The registered person and his or her clients shall provide the default officer with the assistance that the default officer requests be provided.
- (3) A certification by the default officer as to –
 - (a) the value of any claim or of any amount pooled in accordance with Article 16(2); or
 - (b) the amount of payments to be made,shall, in the absence of manifest error, be conclusive.
- (4) The default officer may withdraw, amend or revise his or her certifications at any time but no client who has received payment under such a certificate shall be required to repay any sum.
- (5) The default officer shall report on his or her actions to the Commission and shall comply with any directions it may give the default officer so as to comply with this Order.

PART 4

MISCELLANEOUS

19 Policy documents

If policy documents are held by a registered person on behalf of his or her clients the registered person shall –

- (a) hold the policy documents in his or her own possession and in safe custody and shall not part with possession of them to any person other than the client or in accordance with the client's instructions;
- (b) if the title to the documents passes by delivery, hold them in such a manner that the person entitled to receive the benefit or right under a policy document can be identified at all times; and
- (c) if some of the documents are held –
 - (i) as security for a loan to that client, or

- (ii) as a form of security, guarantee or indemnity provided by way of security for the discharge of any liability arising from transactions effected by the registered person with or for that client,

ensure that the documents can be identified and distinguished from those which are not so held.

20 Exemptions

- (1) This Order does not apply in relation to a person if the person is exempted by the Commission under this Article from the application of this Order.
- (2) A person may apply to the Commission for exemption from the application of this Order.
- (3) The Commission may, after receiving from a person an application under paragraph (2), exempt the person from the application of this Order if the Commission is satisfied that the person is an appropriately regulated person within the meaning of paragraph (4), (5), (6) or (7).
- (4) A person is an appropriately regulated person if the person is –
 - (a) authorized to carry on general insurance mediation business under the Financial Services and Markets Act 2000 of the United Kingdom, as in force from time to time;
 - (b) an appointed representative of an insurance company, or of an insurance intermediary, that is authorized under the Financial Services and Markets Act 2000 of the United Kingdom as in force from time to time;
 - (c) an appointed representative of an insurance company that is authorized under the [Insurance Business \(Jersey\) Law 1996](#); or
 - (d) an appointed representative of an insurance intermediary that is authorized under the Law.
- (5) A person is an appropriately regulated person if the person is –
 - (a) registered or otherwise authorized to carry on general insurance mediation business under an enactment, as in force from time to time, of a country or territory other than the United Kingdom or Jersey;
 - (b) regulated, in respect of his or her carrying on general insurance mediation business, by a regulatory body of that country or territory; and
 - (c) in respect of his or her carrying on general insurance mediation business, subject to a regulatory regime that is sufficient to ensure that no person is liable to be placed at undue financial risk by virtue of the person being exempted from the application of this Order.
- (6) A person is an appropriately regulated person if the person is –
 - (a) the agent of a principal;
 - (b) registered or otherwise authorized to carry on general insurance mediation business under an enactment, as in force from time to time, of a country or territory other than the United Kingdom or Jersey; and
 - (c) in respect of his or her carrying on general insurance mediation business, subject to a regulatory regime that is sufficient to ensure that no person is

liable to be placed at undue financial risk by virtue of the person being exempted from the application of this Order.

- (7) A person is an appropriately regulated person if –
- (a) the person is the agent of a principal;
 - (b) the principal is registered or otherwise authorized to carry on general insurance mediation business under an enactment, as in force from time to time, of a country or territory other than the United Kingdom or Jersey; and
 - (c) the principal is, in respect of his or her carrying on general insurance mediation business, subject to a regulatory regime that is –
 - (i) imposed and supervised by a regulatory body of the country or territory in which the principal is registered or authorized, and
 - (ii) sufficient to ensure that no person is liable to be placed at undue financial risk by virtue of the person being exempted from the application of this Order.
- (8) The Commission may revoke an exemption in relation to a person if the Commission is no longer satisfied that the person is an appropriately regulated person within the meaning of paragraph (4), (5), (6) or (7).

21 Citation

This Order may be cited as the Financial Services (General Insurance Mediation Business (Client Assets)) (Jersey) Order 2005.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Financial Services (General Insurance Mediation Business (Client Assets)) (Jersey) Order 2005	R&O.181/2005	1 December 2005

Table of Renumbered Provisions

Original	Current
21(1)	21
21(2)	Spent, omitted

Table of Endnote References

There are currently no endnote references