



## INSURANCE INTERMEDIARIES (GENERAL BUSINESS) REGULATIONS 2020

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Statutory Document No. 2020/0439

*Insurance Act 2008*

## INSURANCE INTERMEDIARIES (GENERAL BUSINESS) REGULATIONS 2020

*Laid before Tynwald:* 17 November 2020  
*Coming into Operation:* 31 December 2020

The Isle of Man Financial Services Authority makes the following Regulations under sections 27A, 28, 48 and 50 of, and Schedule 7 to, of the Insurance Act 2008, after carrying out all necessary consultations.

### 1 Title

These Regulations are the Insurance Intermediaries (General Business) Regulations 2020.

### 2 Commencement

These Regulations come into operation on 31 December 2020<sup>1</sup>.

### 3 Interpretation

In these Regulations —

“**the Act**” means the Insurance Act 2008;

“**client**” means a registered insurance intermediary’s client and includes a prospective client;

“**client bank account**” means an account held by a registered insurance intermediary which meets the requirements at regulation 10(2) and —

- (a) is especially created by the registered insurance intermediary for the purpose of holding client money; and
- (b) subject to regulation 9(2), is segregated from any account holding money which is not client money;

<sup>1</sup> Under section 50(4) of the Insurance Act 2008, Regulations must be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which the Regulations are laid, or at the next following sitting, resolves that they shall be annulled, the Regulations shall cease to have effect from that time.

**“client money”** means money that is held or received by a registered insurance intermediary —

- (a) from a client to be transferred to an insurer in relation to the payment of a premium; or
- (b) from an insurer in relation to claims money or refunded premiums for onward payment to a client,

but does not include money held at the risk of an insurer, unless the circumstances at regulation 9(2) apply;

**“general insurance business”** means insurance business which is neither a pure protection contract nor long-term insurance;

**“long-term insurance”** has the same meaning as in the Regulated Activities Order 2011<sup>2</sup>;

**“money held at the risk of an insurer”** means money that is held or received by a registered insurance intermediary which is subject to a written agreement between a registered insurance intermediary and an insurer whereby —

- (a) the registered insurance intermediary holds the money as agent for the insurer to the extent that such money is treated as being received by the insurer when it has been received by the registered insurance intermediary; and
- (b) claims and premium refunds are only treated as being received by the client when they are paid to that client;

**“packaged bank account”** means an arrangement under which a person provides a bank account for a customer as part of a package which includes access to other goods and services; and

**“pure protection contract”** has the same meaning as in the Regulated Activities Order 2011.

#### 4 Register of insurance intermediaries

- (1) The register of current registered insurance intermediaries required to be kept under section 48 of the Act must contain the following particulars —
  - (a) the name of the intermediary and any business names it uses;
  - (b) the address of the intermediary’s registered office;
  - (c) the intermediary’s place of business in the Isle of Man (if different to sub-paragraph (b));
  - (d) the date of the intermediary’s initial registration; and
  - (e) the intermediary’s registration number.

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<sup>2</sup> SD 0844/11 (as amended)

- (2) The register of former registered insurance intermediaries required to be kept under section 48 of the Act must contain the same particulars as specified in paragraph (1) as at the date the registration was cancelled and include the date that the registration was cancelled.

## 5 Exemption from the requirement to register

- (1) The following classes of insurance intermediary are exempt from the requirement to register under Part 6 of the Act —
- (a) a person acting as an intermediary only in respect of long-term insurance;
  - (b) a person arranging insurance (other than compulsory vehicle insurance under the Road Traffic Act 1985) that covers the risk of —
    - (i) the breakdown of goods (including vehicles) or the loss of or damage to goods or services provided by that person and other associated risks;
    - (ii) the non-use of services provided by that person; or
    - (iii) damage to or loss of baggage and other risks linked to the travel booked using the services of that person,where the principal business of that person is not that of an insurance intermediary;
  - (c) a person acting as an insurance intermediary which —
    - (i) is authorised under the Financial Services and Markets Act 2000 (of Parliament) to act as an insurance intermediary;
    - (ii) is not ordinarily resident in the Island; and
    - (iii) complies with the conditions specified in paragraph (2).
- (2) The conditions referred to in paragraph (1)(c) are that —
- (a) the insurance intermediary gives written notice to the Authority that it is utilising the exemption;
  - (b) the notice referred to in sub-paragraph (a) contains the following information and such other particulars as may be determined by the Authority —
    - (i) the insurance intermediary's name and any business names it uses;
    - (ii) the insurance intermediary's address;
    - (iii) details of the insurance intermediary's UK Financial Conduct Authority authorisation; and
    - (iv) the expected level and type of business to be undertaken by the insurance intermediary in the Island; and

- (c) the insurance intermediary makes an annual return to the Authority within 14 days of the anniversary of the notice referred to in sub-paragraph (a) containing such particulars as may be determined by the Authority.

## **6 Exemption from certain requirements**

- (1) A person to whom this paragraph applies is exempt from –
  - (a) regulations 18, 19, 20 and 21; and
  - (b) sections 27A(3), 27B, 29(1) and 30 of the Act.
- (2) Paragraph (1) applies to a person acting as an insurance intermediary which –
  - (a) is licensed under section 7 of the Financial Services Act 2008 to carry on regulated activities falling within Class 2(3) and 2(7) of Schedule 1 to the Regulated Activities Order 2011;
  - (b) does not act as an insurance intermediary for general insurance business; and
  - (c) complies with the provisions applicable to that person under the Financial Services Act 2008 and Financial Services Rule Book 2016<sup>3</sup>.
- (3) A person acting as an insurance intermediary in relation to insurance provided as part of a packaged bank account is exempt from regulations 7 and 9 to 21 if that person –
  - (a) is licensed under section 7 of the Financial Services Act 2008 to carry on regulated activities falling within Class 1(1) or 1(2) of Schedule 1 to the Regulated Activities Order 2011; and
  - (b) complies with the provisions applicable to that person under the Financial Services Act 2008 and Financial Services Rule Book 2016.

## **7 Professional indemnity insurance**

- (1) A registered insurance intermediary must effect and maintain continuous professional indemnity insurance which is appropriate to the nature and scale of its business, with an insurer of good standing.
- (2) The rationale for the level of professional indemnity insurance maintained must be documented.
- (3) The professional indemnity insurance must comply with the requirements of the Schedule.
- (4) A registered insurance intermediary must notify the Authority as soon as practicable of any circumstances which give rise, or may give rise, to the

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<sup>3</sup> SD 2016/0264 as amended.

cancellation or termination of the professional indemnity insurance policy effected.

- (5) A registered insurance intermediary must notify the Authority as soon as practicable of any claim exceeding £10,000 on its professional indemnity insurance.
- (6) A registered insurance intermediary must notify the Authority as soon as practicable of any modifications or exclusions to its professional indemnity insurance.
- (7) The Authority may require an insurance intermediary that intends to cancel its registration or sell or otherwise transfer its business or its ownership to a third party to hold “run-off” professional indemnity insurance cover in respect of claims arising for past acts or omissions.

## 8 Cancellation of registration

- (1) A registered insurance intermediary must notify the Authority in writing if it proposes to cancel its registration under section 26A of the Act.
- (2) Any notice under paragraph (1) must —
  - (a) confirm that —
    - (i) the registered insurance intermediary is not required to be registered in respect of any activity corresponding to the registration to be cancelled; and
    - (ii) it has notified all relevant parties of its intention to cancel its registration;
  - (b) include details of the arrangements that the insurance intermediary considers necessary to secure that any business in respect of its registration is discontinued and wound up (a “winding-up plan”); and
  - (c) be given not less than 28 days before the cancellation is proposed.
- (3) A cancellation of a registration under section 26A is not effective until 28 days after the notice is received by the Authority, unless the Authority determines otherwise.
- (4) Where a registration is cancelled, the insurance intermediary must preserve its records for at least six years beginning with the date of cancellation and must notify the Authority, within the notice at paragraph (1), of the method of storage and location of such records.
- (5) For the purpose of paragraph (4), “records” is defined as books, accounts and documents appropriate to the insurance intermediary’s business, that provide legible accurate, verifiable, timely, complete and comprehensible information.

## 9 Money held at the risk of an insurer

- (1) A registered insurance intermediary that holds money at the risk of an insurer must –
  - (a) hold that money in an account which is clearly distinguishable from the intermediary's own bank accounts and from any client bank account, unless the money is to be treated as client money in accordance with paragraph (2);
  - (b) keep proper and accurate records of such money received, paid or held by the intermediary;
  - (c) account properly and promptly for money held at the risk of an insurer; and
  - (d) remit any monies collected in strict conformity with the agreement in place.
- (2) Despite paragraph (1) and regulations 10(1)(a) and 10(2)(c), money held at the risk of an insurer may be treated as client money in accordance with regulations 10 to 17 if the insurer has agreed in writing that the registered insurance intermediary may treat such monies as client money and the insurer has consented to its interests in trust under regulation 14 being subordinated to the interests of the intermediary's other clients.

## 10 Client money

- (1) A registered insurance intermediary that holds client money must –
  - (a) hold that money in a client bank account which is clearly distinguishable from –
    - (i) the intermediary's own bank accounts; and
    - (ii) money held at the risk of an insurer, unless the money held at the risk of an insurer is to be treated as client money in accordance with regulation 9(2);
  - (b) hold that money on trust for the client or insurer entitled to it;
  - (c) keep proper and accurate records of client money received, paid or held by it;
  - (d) account properly and promptly for client money, including ensuring that –
    - (i) client money and other money do not become intermingled (except in accordance with regulations 9(2) and 11(2));
    - (ii) it can at all times be sure how much client money stands to the credit of each client;
    - (iii) money belonging to one client is not used for another; and



- (iv) client money is not included within the registered insurance intermediary's balance sheet.
- (2) The client bank account must —
- (a) be held at a bank licensed by the Authority to carry on a regulated activity falling within Class 1(1) or 1(2), unless otherwise agreed by the Authority in writing;
  - (b) not be combined with any other account in the event of a failure of the registered insurance intermediary;
  - (c) not have any right of set-off or counterclaim against it in respect of any debt owed by the registered insurance intermediary; and
  - (d) include in its title the words “client account” or suitable abbreviation.
- (3) The registered insurance intermediary must obtain from the bank at which the client bank account is held an acknowledgement in writing that —
- (a) it understands that all money standing to the credit of all client bank accounts maintained by the intermediary is held by the intermediary as trustee and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the intermediary;
  - (b) interest earned on each such account will be credited to the account or to an account of the same type;
  - (c) the title of each such account —
    - (i) is in the form requested by the intermediary; and
    - (ii) sufficiently distinguishes the account from any other account containing money belonging to the intermediary,and the intermediary must supply, or arrange for the bank to supply, the Authority with a copy of the acknowledgment.

## 11 Operation of client bank account

- (1) Subject to regulation 9(2) and paragraph (2), a registered insurance intermediary must not pay money which is not client money, or permit such money to be paid, into a client bank account unless it is required —
- (a) to open or maintain the account; or
  - (b) to restore an amount withdrawn in error from the account.
- (2) If money paid to the registered insurance intermediary contains both client money and money which is not client money, the registered insurance intermediary must—

- (a) pay the money into a client bank account; and
  - (b) as soon as the funds are cleared and the amount which is not client money is ascertained, withdraw that amount from the account.
- (3) The registered insurance intermediary must not withdraw money from a client bank account unless —
- (a) it is not client money;
  - (b) it is properly required for payment to or on behalf of a client;
  - (c) it is properly required for payment to an insurer in accordance with regulation 9(2); or
  - (d) it is properly transferred to another client bank account.
- (4) The registered insurance intermediary must not withdraw for its own account any interest earned on a client bank account which is due to a client under regulation 13 (Interest on client money).
- (5) The registered insurance intermediary must not withdraw money for or towards payment of its own fees or commission unless —
- (a) the withdrawal is in accordance with its terms of business with its client; or
  - (b) the amount is agreed by the client.
- (6) The operation of all client bank accounts must be subject to dual signatures.

## **12 Reconciliation of client account**

- (1) A registered insurance intermediary must reconcile the balances of each client bank account with its records at least monthly.
- (2) For the avoidance of doubt, in respect of paragraph (1) —
- (a) the reconciliation must be between the intermediary's records and the banks' statements;
  - (b) all reconciliations must be as at the same date;
  - (c) the reconciliation must be completed within 28 days of the date of reconciliation;
  - (d) the reconciliation must be checked promptly by an individual who did not carry out the reconciliation ("the checker");
  - (e) the individual that carried out the reconciliation and the checker must evidence their work;
  - (f) any discrepancies discovered must be corrected within 7 days, unless they result solely from normal timing differences;
  - (g) there must be a minimum of 20 days between each reconciliation;

- (h) the Authority must be notified promptly if the reconciliation has not been undertaken as prescribed; and
  - (i) the Authority must be notified within 7 days of discovering that a reconciliation cannot be corrected.
- (3) As at the same date and in the same manner as set out in paragraph (2), the registered insurance intermediary must reconcile the balances in its records for each client with the total balances held in client bank accounts.

### **13 Interest on client money**

A registered insurance intermediary must pay interest on money held in a client bank account in accordance with the terms set out in its terms of business with its client. If no interest is to be paid, or if negative interest applies and is to be deducted, this must be clearly set out in the terms of business.

### **14 Client money held on trust**

Client money held by a registered insurance intermediary is held on trust –

- (a) on the terms and for the purposes set out in these Regulations and, subject thereto, *pari passu* for the respective clients for whom it is received or held;
- (b) subject to sub-paragraph (a), *pari passu* in meeting any shortfall in valid claims by clients to client money;
- (c) after all valid claims in (b) have been met, *pari passu* in meeting any shortfall in valid claims by insurers where that money is held at the risk of an insurer in compliance with regulation 9(2); and
- (d) after all valid claims under sub-paragraphs (a), (b) and (c) have been met, for the registered insurance intermediary itself.

### **15 Pooling**

- (1) For the purpose of regulation 14(a), in determining the entitlement of clients to client money, all client money of any currency, even though held in more than one client bank account, shall be treated as pooled in a single pool.
- (2) Where, at the time at which a default occurs, a cheque or other payable order has been paid into a client bank account but has not been cleared, the amount of the order shall, when it is cleared, be pooled.
- (3) For the purpose of this regulation and regulation 16 (No withdrawal in case of default) a registered insurance intermediary or bank is in default where –
  - (a) a liquidator, receiver, administrator or trustee in bankruptcy has been appointed in respect of it;

- (b) any equivalent procedure has occurred in respect of it in a country or territory outside the Island; or
  - (c) the Authority has directed that it shall be treated as in default for the purpose of these Regulations.
- (4) Where a profit or loss is made in the conversion of foreign currency the profit or loss shall be attributed to the pool, rather than to the clients affected.
- (5) Where monies are received from any compensation scheme in relation to a default, those monies must be treated in accordance with any entitlement of the compensation scheme in force at that time.
- (6) Where monies are received from a liquidator in relation to a default, those monies must be treated as pooled for the purposes of this Regulation and applied to the benefit of all clients affected by the default.

## 16 No withdrawal in case of default

- (1) In the case of default by —
- (a) a registered insurance intermediary; or
  - (b) a bank at which a client bank account of the registered insurance intermediary is held,
- no money may be withdrawn from any client bank account of the registered insurance intermediary without the consent of the Authority.
- (2) Paragraph (1) does not apply to any step taken by the registered insurance intermediary in good faith which it reasonably believes will preserve or enhance the fund of client money available despite the default.

## 17 Displacement of general law

The duties of a registered insurance intermediary under these Regulations in relation to client money shall take the place of the corresponding duties which would be owed by it as a trustee under the general law, but without prejudice to the remedies available to clients.

## 18 Change in controlling interests

- (1) A registered insurance intermediary must notify the Authority of any change to an existing controlling interest which would take that controlling interest —
- (a) from 25% or less to over 25%;
  - (b) from 50% or less to over 50%; or
  - (c) from 75% or less to over 75%.

- (2) A notification under paragraph (1) is not required if the registered insurance intermediary has already given such notification to the Authority in accordance with section 29 of the Act.
- (3) Notification must be made —
  - (a) where relevant shares are quoted on an exchange, within 7 days after the registered insurance intermediary becomes aware of the transfer; and
  - (b) in all other cases, 28 days before the transfer is registered.
- (4) For the purposes of this regulation, controlling interest should be interpreted by reference to the definition of “controller” in the Act.

## **19 Financial resources**

- (1) A registered insurance intermediary that is not licensed under section 7 of the Financial Services Act 2008 to carry on a regulated activity falling within Class 1(1) or 1(2) or Class 2(3) and 2(7) must at all times maintain capital resources of at least £10,000 or 125% of its professional indemnity insurance deductible or excess, whichever is higher.
- (2) The formula to be used to calculate capital resources is total assets minus the total liabilities of the registered insurance intermediary.

## **20 Annual accounts**

- (1) The annual accounts provided to the Authority under section 27A of the Act must be in accordance with —
  - (a) the Accounting Standards Board (United Kingdom Accounting Standards) (UK GAAP); or
  - (b) the International Accounting Standards Board (International Financial Reporting Standards) (IFRS).
- (2) Where the registered insurance intermediary is a subsidiary of another company, the annual accounts must be prepared on an unconsolidated basis.
- (3) The annual accounts must be accompanied by an auditor’s management letter or a letter confirming that no management letter has been or will be issued.

## **21 Annual regulatory return**

- (1) A registered insurance intermediary must make a return (an “annual regulatory return”) to the Authority at the same time as its annual accounts are submitted.

- (2) The annual regulatory return must contain such information as may be determined by the Authority.
- (3) This regulation applies to a registered insurance intermediary that submits annual accounts on or after 31 December 2020 in respect of a financial year ending on 30 September 2020 or later.

## **22 Revocation**

The Insurance Intermediaries (General Business) Regulations 1999 are revoked.

**MADE 22 OCTOBER 2020**

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**KAREN BADGEROW**

*Chief Executive of the Financial Services Authority*

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**LILLIAN BOYLE**

*Member of the Isle of Man Financial Services Authority*

## SCHEDULE

## PROFESSIONAL INDEMNITY INSURANCE

*[Regulation 7]*

- (1) The policy must indemnify the insured against —
  - (a) losses arising from claims made against the insured —
    - (i) for breach of duty in connection with the business by reason of any negligent act, error or omission;
    - (ii) in respect of libel or slander, committed in the conduct of the business by the insured, any employee or former employee of the insured, and where the business is or was carried on in partnership, any partner or former partner of the insured; and
    - (iii) by reason of any dishonest or fraudulent act or omission committed or made in the conduct of the business by any employee (other than a director of a body corporate) or former employee (other than a director of a body corporate) of the insured;
  - (b) awards of the Ombudsman made against the insured;
  - (c) claims in connection with the business in respect of legal liability incurred by reason of loss of documents for which the insured is responsible and costs and expenses incurred in replacing or restoring such documents; and
  - (d) legal defence costs.
- (2) The policy must at inception and at each renewal date provide —
  - (a) subject to sub-paragraph (b), a minimum limit of indemnity in respect of each and every loss and aggregate per year of £1,000,000 in respect of the covers required under paragraph (1)(a) to (c); and
  - (b) legal defence costs in addition to the limits of indemnity referred to in sub-paragraph (a) as appropriate to the nature and size of the business undertaken by the insured.
- (3) A maximum policy excess in respect of any one loss must be no higher than an amount that is capable of being met by the insured.
- (4) In this Schedule —

“**award**” means any financial award and the cost of taking any steps that the insured is required by the Ombudsman to take in relation to a complainant;

“**business**” means the business of the insured;

“**insured**” means the registered insurance intermediary;

“**Ombudsman**” means the Isle of Man Financial Services Ombudsman Scheme and any other equivalent ombudsman service whose awards, if made against the insured, the insured would be obliged to pay; and

“**policy**” means the contract of professional indemnity insurance.



*EXPLANATORY NOTE*

*(This note is not part of the Regulations)*

These Regulations include a range of requirements applicable to general insurance intermediaries including in the areas of client money, financial resources and reporting to the Authority. They also set out exemptions from the requirement to register and exemptions from certain requirements.

The Regulations revoke and replace the Insurance Intermediaries (General Business) Regulations 1999.