THE INSURANCE COMMISSION
OF THE BAHAMAS

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# GUIDELINE FOR PREMIUM HELD IN TRUST ACCOUNTS

## Contents

## INTRODUCTION

Intermediaries[1] and insurers in The Bahamas are governed by the Insurance Act, 2005 and the Insurance (General) Regulations, 2010. The Insurance Commission of The Bahamas supervises the insurance industry using the principles and standards outlined within the International Association of Insurance Supervisor's Insurance Core Principles (ICP).[2]

Section 24 (1) of the Insurance Act, 2005 stipulates that no registered insurer may sell or otherwise distribute any insurance product in The Bahamas, other than through a registered insurance intermediary. This feature of the Bahamian insurance industry allows an intermediary to control the distribution channel of insurance products and services.

The payment of an insurance premium by a policyholder forms part of the preliminary stages of obtaining insurance coverage. The Insurance Act, 2005 and the Insurance Core Principles sets out the criteria for handling client funds as follows:

Section 135 of the Insurance Act, 2005 states:

> Where an agent, sub-agent, broker or salesperson acts in negotiating or renewing or continuing a contract of insurance with an insurer and receives any money or substitute for money as a premium for the contract from the insured, he is deemed to hold such premium in trust for the insurer

ICP 18.6 states:

> whether an intermediary act as an agent for the insurer or broker for the policyholder, the intermediary acts in a fiduciary capacity which establishes a legal duty to act in the policyholder's best interest.

If an intermediary does not satisfactorily discharge its fiduciary duties, the intermediary is held accountable for any outstanding funds owed to the insurer. The fiduciary capacity in which intermediaries act is both ethical and legal and ends when the insurer receives the premium or the policyholder is paid their claim.

### Purpose

This Guideline outlines the minimum standards and practices required by intermediaries entrusted with policyholder premium funds obtained in a fiduciary capacity. This Guideline:

- defines policyholder funds/premiums;
- outlines the fiduciary obligations of intermediaries;
- explains the importance of maintaining separate accounts for premium funds and operational expenditures;
- outlines the expected “terms of use” of a business/policyholder premium account; and
- sets the reporting requirements as it relates to policyholder funds.

[1] In this Guide, the term “intermediary” refers to agents, sub-agents and brokers, and where appropriate, a salesperson who deals with premium funds

[2] The Insurance Core Principles were developed by the International Association of Insurance Supervisors (IAIS) and provide a globally accepted framework of principles, standards, and guidance for the regulation and supervision of the insurance sector

## Scope

This guideline outlines the minimum standards for intermediaries who collect premiums on behalf of the insurer licensed in this jurisdiction or from the customer (policyholder) This guideline is also applicable to intermediaries approved by the Commission to enter into an insurance contract with a non-registered company.[3] Using terms defined in the Legislation,[4] this Guide formalizes the Commission's expectations on the use and maintenance of premium funds held in trust, hereafter referred to as the "Premium Trust Account".

# FIDUCIARY RESPONSIBILITY

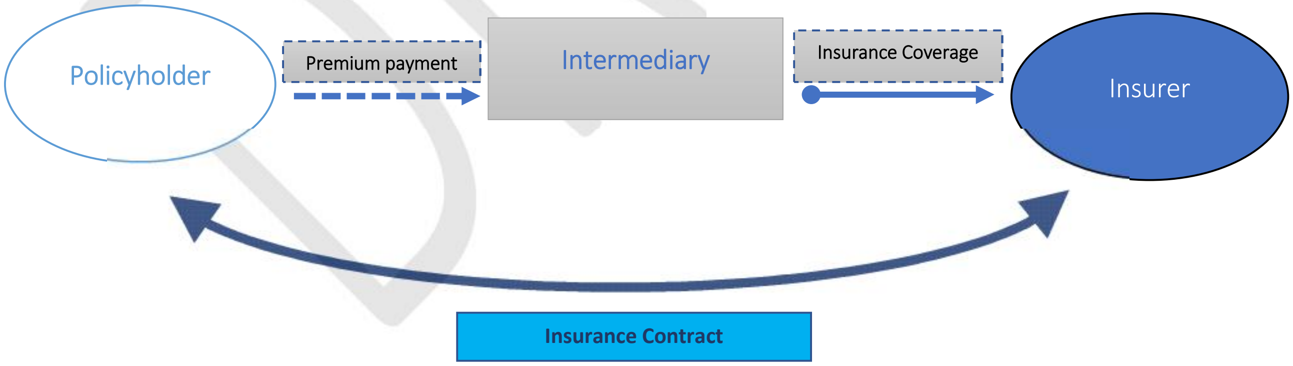
## Protecting Premiums

Protecting the interests of the Bahamian insurance-buying public is an important element of the Commission's mandate. Each rule, policy, or guideline is designed to accomplish this, as well as to protect the integrity of the jurisdiction. All intermediaries who collect premiums must hold such funds in trust for the insurer in accordance with section 135 of the Act. This means all premiums received and held by an intermediary must be held in a separate and distinct bank account. The bank account must be for restricted use and only used to facilitate transactions between the policyholder and the intermediary, or the intermediary and the insurer.

Premium Trust Account funds may include premiums paid, claims money and premium refunds. The account may also include assigned professional fees due from policyholders.

An intermediary who engages in negotiating, renewing or facilitates the continuation of an insurance contract and receives funds as premium, is considered to hold such funds in trust. This guideline is designed to protect the Bahamian policyholder against fraud and the mismanagement of fiduciary funds.

**Figure 1. -** illustrates the distribution channel of insurance products and services through the mandatory use of an intermediary and their fiduciary obligations.






[3] See Insurance Act, 2005 – Section 41

[4] The Insurance Act, 2005; Insurance General Regulations, 2010

## Separating the Accounts

Intermediaries who collect premiums to satisfy the payment terms for an insurance policy are considered fiduciaries for the insurer and policyholder. Intermediaries, specifically agents and brokers for the purposes of this guide, must maintain at least two professional business accounts namely,

1) **Operating Account** - holds funds that belong to the company and used to facilitate the company's day-to-day general and administrative expenses; and
2) **Premium Trust Account** - holds funds placed on behalf of the client which must be forwarded to the insurer to satisfy payment for insurance coverage. Funds must be submitted based on the terms of business agreement (insurer-intermediary) between the parties.

These accounts must be opened prior to registration of the intermediary by the Commission.

The Operating Account

Accounting regulations, such as international financial reporting standards (IFRS) and generally accepted accounting practices (GAAP), prescribe that entities acting in a fiduciary capacity distinguish operating funds from premium trust account funds.

The operating account should indicate the intermediary's revenue and expenses. Funds received from the policyholder should not be recognized as revenue or premiums written and earned. An intermediary's operating account may indicate revenue by way of fees and commissions such as[5]:

- Fees paid directly by the customer;
- Fees or Commissions paid indirectly by the customer by way of deduction from premiums or funds invested; or
- Fees or Commissions paid by the insurer

An intermediary's operating account may also include earnings and investment activities approved by the Commission.

The Premium Trust Account

Insurance intermediaries must ensure that they have adequate safeguards in place to protect client's money. A premium trust account, which will be used solely for retaining policyholder funds, shall be opened at any approved deposit-taking financial institution in The Bahamas. This premium trust account may be opened as a chequing or deposit account and should be separate and clearly distinguishable from the intermediary's operating accounts. Funds deposited into the account should be limited to premiums (commissions can be excluded), fees or taxes paid along with premiums (including any value added taxes, etc.) or subject to the terms of insurer/intermediary agreement.

## POLICIES AND PROCEDURES FOR PREMIUM TRUST ACCOUNT

The intermediary should have adequate policies and procedures in place that address the various circumstances in which they are holding policyholder funds. The policies and procedures regarding policyholder funds and the use of the premium trust account should include the following:

- Premium trust accounts held with approved financial institutions
- Timeframes for monies to be paid into account
- Adequate financial systems and controls including authorization of payments from the account
- Adequate books and records subject to an audit
- Reconciliations on a regular basis and reviewed in accordance with the terms of the insurer/intermediary agreement

[5] See ICP 18 Remuneration (18.5.11)

- Timeframes and steps to handle discrepancies on the account
- The treatment of interest accrued

How the account is used should be guided by the insurer/intermediary agreement. The agreement will address such issues as:

- Who owns the interest that may be accrued on the account?
- How and when are commissions remunerated?

Disbursements from the premium trust account are limited to:

- premiums paid to insurers
- return premiums to policyholders
- transfer of commissions and fees
- fees or taxes collected with premiums paid to insurers of or taxing authority.[6]

Premiums due to insurers may not be paid from the account unless the premiums directly relating to the amount due have already been deposited into and are already being held in the account.

## Naming the Account

For regulatory purposes, any account that is opened with the intention of retaining policyholder funds should include the words "policyholder" or "premiums" in its title that clearly distinguishes the purpose of the account. A premium trust account must be clearly distinguished from the business' other accounts. E.g. ***John Smith's Agency Premium Account or AFD Agency's Client Account***.[7]

The deposit taking financial institution chosen by the intermediary will be under no obligation to ascertain whether the account is being used according to the terms of this Guideline. However, in the intermediary's capacity as fiduciary manager, the Commission will ensure full compliance with these regulations.

## Deposits into the Account

All funds collected from a policyholder must be deposited into the account in accordance with the prescribed terms of the insurer/intermediary agreement. Premiums should be paid in the premium trust account as soon as practicable. The Commission expects intermediaries to pay or transfer funds received in the premium trust account to the operating account by the following day. Intermediaries must deposit and pay premium funds received as provided in this guideline. Regulations 137 and 138 state that the monthly accounts and records of brokers and agents should be reconciled and completed no later than twenty-one days after the end of the month.[8] The accounts and records should show all receipts, expenses, policies issued and renewed by the broker and agent.

## Interest Earned on Account

The ownership of interest accrued is based on the terms of business agreement between the insurer and intermediary. The interest may be:

- Used to offset bank and account service charges; or
- Removed or transferred into the operating account of the intermediary.



[6] Department of Inland Revenue

[7] The account name allows the Commission, if it is ever needed, to seize the contents of such accounts (within the confines of the law) to retrieve client/premium funds..

### Repayment of Policyholder Funds

At times, an intermediary may hold funds on behalf a policyholder for the settlement of a claim or a refund of premium. The repayment of these funds should be facilitated through the intermediary's premium trust account and should be repaid in the method and timeframe outlined within the terms of the insurer/intermediary agreement.

### Records

The account holder should maintain adequate records of funds for accounting and audit purposes. The records should be kept in good order for review by the Commission. Pursuant to section 141 of the Insurance Act 2005, the Commission may request:

- records of all local policies issued by any agent or broker registered in the Bahamas;
- records of the aggregate amount of premiums received on policies;
- a copy of the financial statements of the agent or broker;
- an analysis of any outstanding premiums payable to insurers; and
- such other books, vouchers, receipts and documents as are necessary for the purpose of verifying information provided to the Commission pursuant to the Act.

Any report generated from these records must, at a minimum, list:

- the account name and the amount and date due for each receivable;
- the sum of all receivables;
- repayment of policyholder funds; and
- ageing schedule of all receivables and payables (30 days or less, 31-90 days, more than 90 days).

These records establish and verify the ownership of all funds in the account i.e., from whom were the funds received, or for whom they are held.

## PENALTIES FOR NON-COMPLIANCE

The use of a premium trust account for the collection of premiums allows an intermediary to remain compliant with their obligation to turnover funds to an insurer. Section 135 of the Insurance Act states that if an agent, sub-agent, broker or salesperson fails to pay the premium received over to the insurer, less any agreed deductions, then the failure to do so serves as "prima facie evidence" of a breach of trust.

Should it be determined that an insurance intermediary is in breach of trust then, pursuant to section 125 of the Act, the Commission may suspend the registration of any insurance intermediary, in all or any of the classes of business for which it is registered.

Alternatively, the Commission may impose a penalty on an insurance intermediary in the following manner:

### Fines:

Subject to section 236 of the Act, where any person who contravenes any provision of this Act, Regulations or any direction or requirement made by the Commission, the person is guilty prima facie and will have to prove that they are not guilty of a breach of trust.

Should they be deemed guilty of a breach of trust, the Commission may impose fines which binds the intermediary as follows:

(a) in the case of a company, by a fine not exceeding ten thousand dollars, and where the offence is a continuing offence, by a further fine of one thousand dollars for every day during which the offence continues; and

(b) in the case of an individual, by a fine not exceeding five thousand dollars and where the offence is a continuing offence, by a further fine of five hundred dollars for every day during which the offence continues.

### Administrative Sanctions

Subject to section 238 of the Act, the Commission may further impose a penalty on the insurance intermediary which may include:

i) A public reprimand
ii) A ban on carrying out certain operations
iii) The temporary suspension of a manager
iv) The removal of a director, responsible officer or other senior manager
v) The imposition of conditions on a license

## FORM FOR PENALTIES

When the Commission imposes any penalty or makes an order, it shall do so in writing specifying the offence which the insurance intermediary committed, and the penalty imposed by the Commission.

## RELIEF ONCE PENALTY IS SERVED

Once the insurance intermediary pays the fine as ordered, it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defense for the insurance intermediary to prove that the offence with which it is charged has been dealt with.

A copy of the Order shall be given to the insurance intermediary. The Order may be enforced in the same manner as an Order of the court.

# APPENDIX

## Definitions

| Defined term | Meaning |
|---|---|
| **Agent** | A body corporate appointed by a registered insurer and not being an employee of the insurer. One who solicits applications for insurance, collects money by way of premiums and acting in accordance with the relevant agency agreement, may bind the registered insurer for whom the agent acts in the issue of insurance cover. |
| **Broker** | A body corporate, which acting with complete freedom as to their choice of undertaking, and for commission or other compensation, bring together with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance , and where appropriate, assist in the administration and performance of such contracts. |
| **Co-mingling** | A breach of trust in which a fiduciary mixes funds held in care for a client with their own funds, making it difficult to determine which funds belong to the fiduciary and which funds belong to the client. A practice that occurs when an agent or broker mixes personal funds with the insured's or insurer funds; |
| **Fiduciary** | A person (or a business like a bank or stock brokerage) who has the power and obligation to act for another (often called the beneficiary) under circumstances which require total trust, good faith and honesty. |
| **Intermediary** | An insurance agent, broker, sub-agent, adjuster, risk manager, consultant, or such other persons who give advice in respect of an insurance product and includes the promotion of such product or the facilitation of an agreement or contract between an insurer and a customer. |
| **Operating Account** | The operating account is a type of bank account that shows how the business generates revenues and how items decrease earnings. |
| **Premium** | An amount to be paid for a contract of insurance |
| **Premium Trust Account** | An account in which an insurance intermediary (acting as an authorized custodian) holds funds for specific purposes, protected from creditors. Any premium payment deposited in a premium trust bank account becomes "fiduciary" funds, subject to insurance law. |