



INSURANCE COMMISSION
OF THE BAHAMAS

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GUIDELINE FOR PREMIUM TRUST ACCOUNTS

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INTRODUCTION

Intermediaries¹ 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.

The payment of an insurance premium by a policyholder forms part of the preliminary stages of obtaining insurance coverage. The Act and the ICP's set 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 acts as an agent for the insurer, or as a 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.

Scope

This Guideline is applicable to intermediaries who collect premiums on behalf of the insurer registered in this jurisdiction or from the customer (policyholder). This Guideline is also applicable to intermediaries

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

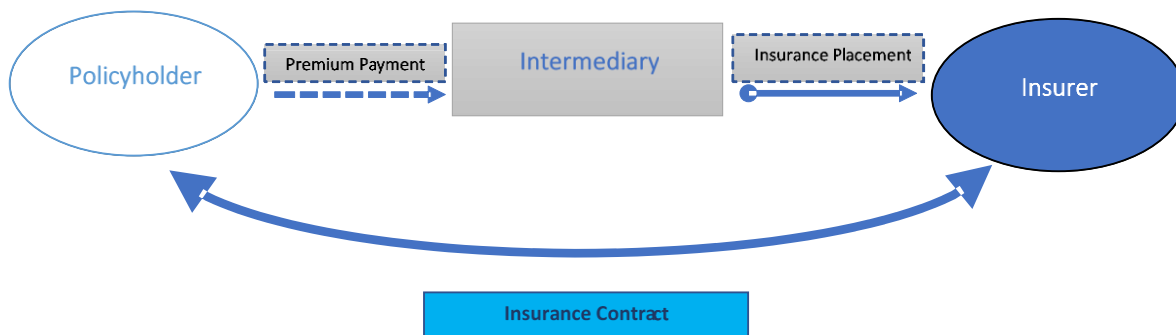
approved by the Commission to enter into an insurance contract with a non-registered company.³ Using terms defined in the legislation,⁴ this Guideline formalizes the Commission’s expectations on the use and maintenance of premium funds held in trust, referred to as the “Premium Trust Account”.

FIDUCIARY RESPONSIBILITY

Protecting Premiums

Protecting the interests of the policyholders is an important element of the Commission’s mandate. 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. Commissions due to the intermediary may be transferred from this account.

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



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, 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 the agency 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.

³ See Insurance Act, 2005 – Section 41

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

Only the intermediary's revenue and expenses should flow through the operating account. Premium received from the policyholder cannot be recognized as revenue or premiums written and earned. An intermediary's operating account may reflect revenue by way of fees and commissions such as⁵:

- 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
- 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 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.

⁵ See ICP 18 Remuneration (18.5.11)

⁶ Department of Inland Revenue

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 ABC 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.

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. 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. The accounts and records should show all receipts, expenses, policies issued and renewed by the broker and agent.

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. 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

Failure to comply with this Guideline is a breach of section 234 of the Act which will lead to the imposition of sanctions. Sanctions issued by the Commission may be administrative penalties or fines.

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.

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.