

Investment Business (Clients' Money) Regulations 1996

Statutory Document No: 153/96

[Please note: These Regulations replace previous Statutory Document No. 173/93 and Government Circular No. 374/91]



INVESTMENT BUSINESS ACT 1991 TO 1993

INVESTMENT BUSINESS (CLIENTS' MONEY)
REGULATIONS 1996

Approved by Tynwald on 21 May 1996

Coming into Operation on 1 April 1996

In exercise of the powers conferred on the Financial Supervision Commission by Sections 7(1) and 20 of the Investment Business Act 1991(a), and all other enabling powers, and after consulting the Treasury the following Regulations are hereby made:-

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Citation and Commencement

1. These Regulations may be cited as the Investment Business (Clients' Money) Regulations 1996 and shall come into operation on 1 April 1996.

Interpretation

2. In these Regulations:-

"the Code" means the Financial Supervision Commission (Clients' Money) Regulatory Code(b) or Chapter 4 of the Financial Supervision Commission (Stockbrokers) Regulatory Code(c), as the case requires;

"Designated Client Bank Account", "Designated Client Fund Account" and "Designated Fund" have the meanings given by the Code;

"default", in relation to a licenceholder or bank, means:-

(a) 1991.c.18 (b) SD 172/93 (c) SD 156/96

- the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy, or any equivalent procedure in any foreign jurisdiction; or
- a direction having been issued by the Commission declaring that, for the purpose of these Regulations, the licenceholder or, in relation to the licenceholder, the bank be treated as in default, and all other expressions shall be given the same meanings as they have in the Financial Supervision Commission (General Requirements) Regulatory Code 10 or in Chapter 7 of the Financial Supervision Commission (Stockbrokers) Regulatory Code, as appropriate.

Clients' Money

3. It is hereby declared that clients' money held by a licenceholder in the course of investment business carried on in or from the Island is held on trust:-

- (a) first, on the terms and for the purposes set out in these regulations and in the Code and, subject thereto, *pari passu* for the respective clients for whom that clients' money is received or held; and in determining the entitlement of clients to clients' money (save as provided in Regulations 4 to 9) all such money shall be treated as pooled; and
- (b) secondly, and subject thereto, *pari passu* in meeting any shortfall in valid claims by clients to clients' money and, for this purpose, disregarding Regulations 5 to 9; and
- (c) thirdly, and after all valid claims under paragraphs (a) and (b) have been met, for the licenceholder itself and, subject to compliance with the Financial Supervision Commission (Clients' Money) Regulatory Code, may then be withdrawn from the client bank accounts.

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Distribution of Clients' Money between Clients**Pooling**

4. (a) The rule of equality of distribution *pari passu* as between clients as provided for in Regulation 3(a) shall take effect even though money is held in more than one Client Bank Account, all money held in such accounts being pooled, except that where there is an insufficiency of clients' money for whatever reason, special classes of money and claimants are created by Regulations 5 to 9.
- (b) The power of a licenceholder, in accordance with paragraphs 6 to 8 of the Code, to pay money into and out of Client Bank Accounts is interrupted (subject to such directions as may be issued to the licenceholder by the Commission) by a default of the licenceholder or a bank at which a Client Bank Account is held, save that, in the case of default of a bank:
- the interruption does not apply to:
 - i) Designated Client Bank Accounts at banks other than the bank in default;
 - ii) Designated Client Fund Accounts, where the clients for whom such accounts have been opened have not chosen the bank in default as a bank with which their money may be held; and
 - iii) Client Bank Accounts (other than Designated Client Bank Accounts and Designated Client Fund Accounts), where no such account is held at the bank which is in default.
 - the licenceholder is empowered to take steps in good faith which he reasonably believes will preserve or enhance the fund of Client Money available notwithstanding such default.
- (c) Where a default of a licenceholder occurs, money held in all the licenceholder's Client Bank Accounts is pooled (subject to paragraphs 5 to 9 of these Regulations), and must be made available to meet the claims of clients so entitled.
- (d) Where, at the time at which a default occurs, a licenceholder has paid a cheque or other payable order into a Client Bank Account, but it has not cleared, the amount so credited in the bank's records shall, provided that the cheque or order clears, be pooled in accordance with these Regulations.

Money held in an Overseas Bank - non compliance with the Code

5. If there is an insufficiency of clients' money and the insufficiency results from the fact that a bank outside the Isle of Man and the United Kingdom in which clients' money is held does not recognise that money in the account is held in accordance with the Code then:-

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- (a) all clients' money held in the Client Bank Accounts of the licenceholder with that bank shall be pooled and made available to satisfy the claims of clients whose money was held or which should have been held in such Client Bank Account with that bank; and
- (b) that clients' money shall not be treated as pooled with clients' money held in Client Bank Accounts of the licenceholder with other banks.

Money held in an Overseas Bank - insolvency

6. Subject to Regulations 8 and 9, if there is an insufficiency of clients' money and the insufficiency results from the fact that a bank outside the Isle of Man and the United Kingdom in which clients' money is held is in default then:-

- (a) all clients' money held in Client Bank Accounts of the licenceholder outside the Isle of Man and the United Kingdom with that bank shall be pooled and made available to satisfy the claims of clients whose money was held or which should have been held in a Client Bank Account outside the Isle of Man and the United Kingdom with that bank; and
- (b) the clients' money shall not be treated as pooled with clients' money held in other Client Bank Accounts of the licenceholder.

Default of Bank - in circumstances where no pooling

7. If there is an insufficiency of clients' money and the insufficiency results from the fact that a bank in which clients' money is held is in default then, notwithstanding Regulation 3(a), money held in the following bank accounts shall not be pooled and the licenceholder may continue to operate these accounts:-

- (a) Designated Client Bank Accounts at banks other than the bank which has become in default; or
- (b) Designated Client Fund Accounts where the clients for whom such accounts have been opened have not chosen the bank which is in default as a bank with which their money may be held; or
- (c) Client Bank Accounts (other than Designated Client Bank Accounts and Designated Client Fund Accounts), where no such account is held at the bank which is in default.

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Designated Accounts - Pooled

8. If there is an insufficiency of clients' money and the insufficiency results from the fact that a bank in which clients' money is held is in default, then a client or clients in respect of whom a Designated Client Bank Account has been opened at that bank shall be entitled to claim (in the event of a claim by more than one client, on a *pari passu* basis) against the money in that account to the exclusion of all other clients; but none of them shall be entitled to claim against any other Client Bank Account in respect of that money.

Designated Client Fund Accounts - Pooled

9. If there is an insufficiency of clients' money and the insufficiency results from the fact that a bank in which clients' money is held is in default then, each of the licenceholders' Designated Client Fund Accounts held at that bank shall form a separate pool:-

- (a) for the clients who have consented to their Designated Fund being held (whether in whole or in part) in that account with the bank which is in default; and
- (b) with any other Designated Client Fund Account of the licenceholder (with which ever bank held) which contains part of the same Designated Fund as is held in the account with that bank which is in default.

Displacement of General Law

10. The duties of a licenceholder holding Clients' Money under these Regulations and the Code 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.

Revocation of SD 173/93

11. The Investment Business (Clients' Money) Regulations 1993(d) are revoked.

(d) SD 173/93

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Made under the Common Seal of the Financial Supervision Commission

this 27th day of March 1996.

D J Gelling
CHAIRMAN

J E Noakes
CHIEF EXECUTIVE

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations, which have extended the previous Regulations to cover the Financial Supervision Commission (Stockbrokers) Regulatory Code, declare that clients' monies held by the holders of Investment Business Licences are held on trust. The Regulations provide, also, for the distribution of clients' monies between clients in the event of a failure of the licenceholder where there is a deficiency on the clients' accounts of that licenceholder or in the event of a default of a bank with which clients' monies are held.

These Regulations enable clients to specifically instruct the licenceholder to hold their monies with a particular institution ("a Designated Client Account") rather than with other institutions with which the licenceholder might hold clients' accounts. In such circumstances, in the event of the failure of an institution not specifically elected by the client, monies held in the Designated Client Account at the elected institution would not be pooled to repay those clients who had not specifically instructed the licenceholder to hold their monies in that particular institution.