

Requirements to be complied with by, and other matters respecting, an umbrella fund to which section 1405 (1) applies

1406. (1) An umbrella fund to which section 1405 (1) applies shall—

(a) ensure that the words “An umbrella fund with segregated liability between sub-funds” are included in all its letterheads and in any agreement entered into by it in writing with a third party; and

(b) disclose to a third party that it is a segregated liability umbrella fund before it enters into an oral contract with the third party.

(2) If an umbrella fund fails to comply with subsection (1)(a) or (b), the umbrella fund and any officer of it who is in default shall be guilty of a category 3 offence.

(3) There shall be implied in every contract, agreement, arrangement or transaction entered into by an umbrella fund to which section 1405 (1) applies the following terms, that:

(a) the party or parties contracting with the umbrella fund shall not seek, whether in any proceedings or by any other means whatsoever or wheresoever, to have recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund;

(b) if any party contracting with the umbrella fund shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund, that party shall be liable to the umbrella fund to pay a sum equal to the value of the benefit thereby obtained by it; and

(c) if any party contracting with the umbrella fund shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund of an umbrella fund in respect of a liability which was not incurred on behalf of that sub-fund, that party shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the umbrella fund and shall keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by an umbrella fund as a result of any such trust as is described in subsection (3)(c) shall be credited against any concurrent liability pursuant to the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by an umbrella fund pursuant to the implied term set out in paragraph (b) or (c) of subsection (3) or by any other means whatsoever or wheresoever in the events referred to in those paragraphs shall, after the deduction or payment of any costs of recovery, be applied so as to compensate the sub-fund affected.

(6) In the event that assets attributable to a sub-fund to which section 1405 (1) applies are taken in

execution of a liability not attributable to that sub-fund, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to that sub-fund affected, the directors of the umbrella fund, with the consent of the custodian, shall certify or cause to be certified, the value of the assets lost to the sub-fund affected and transfer or pay from the assets of the sub-fund or sub-funds to which the liability was attributable, in priority to all other claims against such sub-fund or sub-funds, assets or sums sufficient to restore to the sub-fund affected, the value of the assets or sums lost to it.