

# TECHNICAL SALES BRIEFING



## UTMOST INTERNATIONAL ISLE OF MAN LIMITED BANK ASSIGNMENTS

The following information is based on our interpretation of current law and taxation practice in the Isle of Man and the UK as at 1 August 2019.

- › This technical briefing has been designed to provide clarity with respect to bank 'assignments' and the processes we follow at Utmost International Isle of Man Limited. These assignments are also called notices of interest or notices of assignment.
- › Please note that this briefing is ONLY in relation to assignments to banks. It does not cover other assignments, such as assignments between individuals or into trust.
- › Over time, we have been asked to adopt a different process whereby we make the bank the named policyholder from outset. In this briefing we explain the difficulties of why we are not adopting this approach and are choosing to adhere to the set industry procedure.

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## INTRODUCTION

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Recently, the Isle of Man technical team has been asked how bank notices of assignment are administered and how they are treated for tax purposes. This briefing has been produced to explain both the administrative steps for a notice of assignment and how they are treated for tax purposes.

Firstly, there seems to be a mistaken belief that a bank can **either** take a notice of assignment **or** give a notice of interest and some people refer to a choice between the two methods. This is not true, and whether banks refer to a 'Notice of Assignment' or a 'Notice of Interest', they are referring to the same legal process. In simple terms, this process is the bank notifying the life office that they hold an assignment against the policy, signed by the policyholder, that they can submit to us should the policyholder default on their lending agreement with the bank.

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## LEGAL AND ADMINISTRATIVE POINTS

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The assignment process would typically take the following steps:

1. A client incurs a liability with a bank. This may be a loan or it may be a contingent liability to support, for example, a letter of credit or guarantee.
2. The bank agrees to take a policy as security against this liability. It does this by taking an assignment over the policy with the policyholder. Here the term 'assignment' is a specific description commonly used to describe a charge over a life policy. Other terminology includes charge and legal charge. Some banks may even refer to the assignment as a mortgage which is effectively what it is.
 

This can be considered as an assignment that can be submitted should the policyholder default on their liability with the bank. At outset the bank has not taken ownership of the policy and will not do so until it submits a specific assignment request as per point six.
3. The bank can choose whether or not to tell the life company that it has this assignment (step 2). Invariably, banks do inform the life company to protect their position as having first legal charge over the policy. They tell the life company by giving a 'Notice of Assignment' (sometimes called 'Notice of Interest'). The bank normally requires the life company to acknowledge this Notice of Assignment. This is usually achieved by signing and returning a copy of the notice.
 

Overseas banks should ask the client to countersign the Notice of Assignment, giving the life company confirmation that a valid assignment exists. We have also noticed a trend whereby some UK banks may also ask for such a counter-signature, which is not a problem.
4. For many years this procedure was standard and agreed between the Association of British Insurers (ABI) and the British Bankers Association (BBA). This agreement came to an end in 2012 and no replacement guidelines were issued to insurers. Due to the lack of further guidance, Utmost International Isle of Man Limited have taken the decision to maintain the process previously agreed, as this appears to satisfy all parties. These procedures allow that the bank (provided it is a UK bank and not an overseas bank) need not send the actual assignment paperwork to the life company. Notice will suffice until, and unless, they actually want to encash all, or part, of the policy. Since the vast majority of assignments do not progress to encashment, that saves everyone a lot of paperwork.
5. As explained previously, at this point the policyholder remains the legal owner and can still give us instructions. There is no transfer of ownership to the bank as the assignment has not been enforced at this stage. Banks expect life companies to confirm the acceptability of client instructions (such as investment switches and withdrawals) as this may affect the value of the policy and therefore the bank's security.
6. In the event the policyholder defaults on their obligations to the bank, and the bank wants to encash all or part of the policy, the life company must then request the original assignment. The assignment forms an integral part of the legal chain of title and also allows the life company to compare wet signatures and to be sure the assignment is truly valid. If the bank is following normal lending practices, it will have also retained the original policy documents when taking its assignment, so that it can send them in with the assignment when asking for any encashment.

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## THE CURRENT PROCESS WITH UTMOST LIMITED

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The current process at Utmost International Isle of Man Limited, which has been in place for many years, works on the basis of the above legal framework:

1. The bank sends in a Notice of Assignment and Utmost International Isle of Man Limited note this on the system. This notice is usually in the form of a letter from the bank;
2. The policyholder doesn't change, but any instruction must be formally confirmed by the bank;
3. The bank will hold the assignment form (and usually the policy document) in their office in case the client defaults. If the bank sends this in with the notice we will take a copy and send the original back. It is preferred they don't send this in to avoid any confusion;
4. If the client doesn't default the bank will send written confirmation that it no longer has any interest in the policy (commonly called 'Notice of Re-assignment'). The note is then removed from the system;
5. Should the client default then the bank would send in the previously signed assignment paperwork and our standard surrender form, signed by the bank. No further communication with the client is necessary or desirable.
6. The policy would then be formally assigned to the bank and the policyholder would be recorded as the bank. The bank would then be able to give instructions without reference to the policyholder, for example they could request to surrender the policy. Once the policy is assigned following a default the previous policyholder is not entitled to any further information with respect to the policy. Any enquiries from the previous policyholder should be referred to the bank.
7. This assignment, for tax purposes, would be an assignment for value (or consideration) as the policy has been sold to the bank by the policyholder in lieu of their debt with the bank. Any chargeable event arising from this full assignment would fall on the client as the assignor. We would record the assignment as for value "unknown" (as we do not know any other consideration that has been passed over) but we must report (to HMRC) the assignment event as it occurs.
8. The bank would then generally surrender the bond to take back the money owed to them. The bank is legally obliged to account to the original policyholder with respect to any surplus when the debt has been repaid.

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## CAN THE NOTICE BE PROCESSED VIA A CHANGE OF OWNERSHIP?

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The process explained on the previous page was the standard ABI/BBA industry practice for many decades. Consequently, any changes to the notice of assignment process, whilst appearing straightforward, are fraught with difficulties and unquantified risks.

The standard notice of assignment procedure allows for easy administration in respect of both bank administration and tax reporting. This is due to the fact that the bank is obliged to tell us when the assignment for money's worth has happened. We also know that any chargeable event which is generated falls on the policyholder until this time. From a legal perspective, the Notice of Assignment is just as robust as if the bank took a full assignment. The life company will record the notice on their system which prevents any surrender or withdrawal without authority from the bank.

We have occasionally been asked if we can make the bank the named policyholder from outset, i.e. take a full assignment for their security. This would appear not to

create any immediate chargeable event providing the assignment was on the back of a loan agreement by the bank. The guidance in IPTM 3430 seems to make this clear:

<http://www.hmrc.gov.uk/manuals/iptm/iptm3430.htm>

*"An assignment of rights, or of a share in rights, under a policy or contract is ignored if it is.....by way of security for a debt, for instance to a lending bank"*

However, under such a process, the bank would need to monitor the actions they take as any withdrawals made by the bank may have tax consequences for the policyholder, who would still be deemed the beneficial owner for tax purposes. Furthermore, they would need to make sure that they inform the life office in good time should the client default so we can record that the assignment is now for value. If they did not, the policyholder may be fined for not recording the assignment on their tax return.

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## CONCLUSION

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There is no specific guidance on this particular point but clearly a full assignment process to cover a debt obligation is very problematic.

Consequently, Utmost International Isle of Man Limited will not accept any request to immediately transfer the policy into the bank's name. Instead, we will insist that bank assignments are processed using the standard, recognised and generally accepted notice of assignment route.

TECHNICAL SERVICES  
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