



Guidance to profession: CBL Insurance Europe DAC

13 March 2018

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Disclaimer and updates

Disclaimer

- 1.1. This guide is intended as general guidance and does not constitute a definitive statement or interpretation of the law. Whilst care has been taken to ensure the accuracy of the information in this guide as at the date of publication, the Society will not accept any legal liability nor warrant the accuracy of the information within.

Update notice

- 1.2. The Society continues to monitor this situation, and this guide will be updated on an ongoing basis as the situation progresses. Readers are advised to check the Society's website to ensure that they are using the most up-to-date version of the guide.
- 1.3. This is the third publication of the guide. The first publication was published on 20 February 2018. Subsequent updates will be noted in this section of the guide.

2. CBL Insurance Europe DAC

- 2.1. CBL Insurance Europe DAC (“CBL”) is a participating insurer in the solicitors’ professional indemnity insurance (“PII”) market in this jurisdiction for the 2017/2018 indemnity period.
- 2.2. CBL is registered in Ireland and its home state regulator is the Central Bank of Ireland.
- 2.3. CBL is unrated, but has provided a sister company guarantee (originally A- A.M. Best, but now downgraded to BBB+)
- 2.4. CBL’s contact details are as follows:

*13 Fitzwilliam Street Upper
Dublin 2
D02 V045*

*Tel: (01) 764 5640
Fax: (01) 672 5774*

- 2.5. CBL provides coverage to 62 solicitor firms in this jurisdiction for the 2017/2018 indemnity period.

3. Actions by the Central Bank of Ireland

- 3.1. On 20 February 2018, CBL contacted the Law Society of Ireland to notify that the Central Bank of Ireland had issued a direction to CBL pursuant to Section 45 of the Central Bank (Supervision and Enforcement) Act 2013 in the following terms as part of the supervisory engagement process in place:
 - (a) CBL shall immediately cease writing all new contracts of insurance; and
 - (b) CBL shall immediately refrain from renewing any existing contracts of insurance.
- 3.2. On 26 February 2018, a provisional administrator (Kieran Wallace of KPMG) was provisionally appointed to CBL Insurance Europe DAC by the High Court on an *ex parte* application by the Central Bank of Ireland, in accordance with the provisions of the Insurance (No. 2) Act 1983.
- 3.3. On 12 March 2018, Kieran Wallace of KPMG was appointed as administrator of CBL Insurance Europe DAC by the High Court on application by the Central Bank of Ireland, in accordance with the provisions of the Insurance (No. 2) Act 1983.
- 3.4. It is the statement of the Central Bank that existing policies continue to remain in force.
- 3.5. The applications on 26 February 2018 and 12 March 2018 were made following the decision by the High Court of New Zealand on 23 February 2018 to put CBL Insurance Limited (parent company and major reinsurer of CBL Insurance Europe DAC) into interim liquidation, following an application by the Reserve Bank of New Zealand. CBL Insurance Limited had previously had its shares suspended by New Zealand and Australian regulators, and its financial strength rating downgraded by A.M. Best from A- to BBB+ on 20 February 2018.
- 3.6. It is the view of the Society that the appointment of the administrator does not constitute an insolvency or non-performance event as defined in the professional indemnity insurance regulations as, under Section 2(3) of the Insurance (No. 2) Act 1983, the purpose of such appointment is to take over management of the business of the insurer and to carry on that business as a going concern with a view to placing it on a sound commercial and financial footing.
- 3.7. Consequently, it would be precipitous to claim that this latest adverse development as an insolvency or non-performance event for the purposes of the professional indemnity insurance regulation.
- 3.8. As such, provided that there are no further adverse developments, solicitors covered by CBL Insurance Europe DAC are not required at this time to obtain alternative cover. However, it is open to solicitor firm to seek alternative cover if they so wish.
- 3.9. Should an insolvency or non-performance event as defined under the professional indemnity insurance regulations be triggered in future, each firm covered by the insurer

will be required to obtain replacement cover within 30 working days from another participating insurer or the Assigned Risks Pool (“ARP”) from the date of the insolvency or non-performance event to the end of the current indemnity period (30 November 2018). This will require the payment of an additional premium to the new insurer or the ARP

- 3.10. All claims should continue to be submitted to the company’s claims handling agent as stated on the policy documentation.

4. Guidance for profession

Is this an insolvency event? Will my claims be covered?

- 4.1. This situation, as announced and provided that there are no further adverse developments, is not an insolvency event.
- 4.2. As such, provided that there are no further adverse developments and CBL are able to honour their commitments to policyholders, cover will remain in place for any firms who are covered by CBL until the end of the indemnity period (30 November 2018).

Will I have to get a new insurer for next year?

- 4.3. If the direction of the Central Bank of Ireland remains in place, CBL will not be able to participate in the solicitors' insurance market for the 2018/2019 indemnity period. As such, any firm currently covered by CBL would need to obtain cover from an alternative insurer, with such cover commencing 1 December 2018. Should the Central Bank lift the direction to cease writing business, CBL Insurance Europe DAC will still need to satisfy the prudent minimum financial rating requirements of the Law Society of Ireland in order to remain in the solicitor's professional indemnity insurance market. It currently does so through a guarantee from a rated sister company.

What should I do to prepare to get a new insurer?

- 4.4. Firms covered by CBL should contact their brokers immediately to discuss the process of preparing for the 2018/2019 renewal and obtaining an alternative insurer if necessary. New insurance will need to be in place before the mandatory renewal date of **1 December 2018**.

Collect information now

- 4.5. Firms should start collecting information well in advance of the renewal period as the information required can be difficult and time-consuming to find. The collation of information should continue on an ongoing basis throughout the year to save time and money in the long-term.
- 4.6. Most of the information expected to be required in the 2018/2019 common proposal form will be the same as in the current form, which can be accessed at:
<https://www.lawsociety.ie/globalassets/documents/committees/pii/cpf-201718.pdf>
The new common proposal form for the 2018/2019 indemnity period is expected to be published in early August 2018. Firms are advised to check their completed forms from last year, and the documentation provided with that form.

4.7. If your firm now, or in the past, has been engaged in areas insurers consider to be high risk, such as conveyancing, wills, probate¹, and personal injuries, you should prepare an outline of steps taken by your firm to minimise the risk of claims from these areas and demonstrate your firm's experience in the relevant practice areas.

Seek a copy of your claims history

4.8. Firms are entitled to obtain a copy of their claims history from their current insurer for the current indemnity period, and previous insurers of the firm for previous indemnity periods. The insurer is required to provide this information in accordance with the Participating Insurers Agreement within 10 working days of receiving a request to do so.

4.9. The claims history report from your insurer should contain the following information:

(a) A summary of each claim made against the firm under each policy.

(b) The amount reserved by the insurer against each claim (including the basis on which the amount was calculated) and whether the amount includes defence costs.

(c) Information on any excess or deductible for each claim and any amounts paid out in relation to each claim (including any excess or deductible due from but not paid by the firm).

4.10. It may be prudent to immediately seek a copy of your claims history from CBL as there may be difficulties obtaining same closer to the renewal date.

4.11. When applying for quotes for the 2018/2019 indemnity period, you should include with your claims history in the common proposal form:

(a) comments on the current status of any outstanding claims; and

(b) outline what steps have been taken to avoid re-occurrence of the problem

Research the market

4.12. You should research PII market conditions and enquire from brokers about the types of firms that are covered by each insurer. Many insurers may have narrow underwriting criteria and will only quote certain types of firm.

4.13. Enquiries should also be made as to what the key issues are for insurers interested in covering your type of firm when assessing proposals.

Notification of claims

¹ Although some insurers consider probate work to be low risk.

- 4.14. All claims made against firms and circumstances that may give rise to a claim are required to be notified to the firm's insurer as soon as possible and, in particular, before the end of the indemnity period.
- 4.15. It may be prudent for firms to immediately notify any such claims and circumstances to CBL to ensure that such claims are covered as part of the orderly run-off of business.
- 4.16. All other claims or circumstances which arise later in the year should be immediately notified to CBL as they arise.
- 4.17. Your firm should ensure that it complies with any notification requirements set out in the insurance policy terms and conditions.
- 4.18. Notifications of claims and circumstances to your insurer are vital due to the "double trigger" requirement, which requires all claims to be made and notified to the insurer in the same indemnity period.
- 4.19. It will also assist your firm in obtaining an alternative insurer if you can demonstrate that all claims and circumstances have already been notified to CBL.

Check if you are a distressed firm

- 4.20. If insurers consider your firm to be high risk, or a 'distressed firm', this can lead to refusal to quote, higher premiums and higher excess.
- 4.21. Indicators that you may be considered a distressed firm include:
- (a) sudden increase in the frequency and/or severity of claims being made against the firm;
 - (b) deterioration in the firm's claims history;
 - (c) rogue fee earners in the firm;
 - (d) partners involved in fraudulent activity;
 - (e) litigious nature of, and liabilities arising from, conveyancing work;
 - (f) laundry listing claims at the end of the year;
 - (g) delay in notifying claims; and
 - (h) difficulties with your firm's last renewal.
- 4.22. If you are concerned that you may be considered to be a distressed firm, you should seek advice from your broker on how to make your firm more attractive to insurers, including early application, providing professional and in-depth information to reassure underwriters, commissioning an independent risk review to focus on problem areas in the

firm where claims have arisen, identifying the underlying causes of claims, implementing risk management measures in relation to claims and ensuring that all claims and circumstances have been properly notified and accepted by the firm's existing insurer.

Apply early

- 4.23. Some insurers limit the amount of business that they accept and, when this limit is reached, they will stop offering cover. Therefore, common proposal forms should be submitted as early as possible.
- 4.24. Early submission should also indicate that a firm is professional and well managed and therefore less likely to constitute significant risk. Making an application close to the deadline is not viewed favourably by insurers.
- 4.25. Wherever possible, firms should meet with insurers or brokers to address any key issues or concerns of the insurers or brokers.
- 4.26. If you deal with more than one broker, try to ensure that your proposal form is not sent to any particular insurer more than once. This can cause delay.
- 4.27. Ensure the common proposal form is comprehensively and accurately completed with all the required documentation. Ensure your responses are legible, accurate and well-presented. Try to avoid submitted hand-written proposal form.
- 4.28. As mentioned previously, the common proposal form and relevant guidance are expected to be published in early August 2018.

Follow up on your application

- 4.29. Follow up with your broker on the status of your application once submitted, including the identities of the insurers the broker submitted the form to and the dates the form was submitted.
- 4.30. Respond promptly to any requests for further information or clarifications from your broker or insurer.
- 4.31. Seek regular updates from your broker on the progress of your proposal if they do not in any event provide such information. Insurers must confirm they are willing to cover a firm and provide a quote within 10 working days of receiving a properly completed proposal form.

Accept quotation promptly

- 4.32. If you receive an acceptable quote for cover, do not delay unduly accepting the quote, as the quote may be available for acceptance only during a specified period or may be withdrawn before acceptance. Never delay accepting a quotation beyond close of business on 30 November 2018.
- 4.33. It should be noted that insurers are required to leave quotes open for a period of not less than 10 working days. This requirement was introduced in the 2012/2013 indemnity period and remains in place for the 2017/2018 indemnity period. Make sure you confirm your decision to accept a quote before the offer expires.

Risk management

- 4.34. The Society strongly recommends that firms adopt formal risk management policies and procedures and notify insurers of the procedures in place. The risk management section of the common proposal form takes up a significant portion of the form, which reflects its importance to insurers.
- 4.35. Each insurer is expected by the Society to advise those firms currently insured by that insurer which the insurer believes would need to arrange for a risk management audit of their practice in order to facilitate the renewing of their PII.
- 4.36. Risk management guidance can be found on the Society's website at:
<https://www.lawsociety.ie/globalassets/documents/committees/pii/riskmanagementguidancenotes2017.pdf>

If you are unable to obtain cover

- 4.37. If it becomes clear that you are unable to obtain cover in the market, or it appears likely that you will be unable to do so, act immediately. As a matter of urgency, discuss the situation with your broker and contact the Society's PII helpline (see details in "PII Helpline" section below).
- 4.38. You should inform the Society in writing that you have been unable to obtain cover in the market before the 30 November 2018 and keep the Society updated on your progress to obtain cover.
- 4.39. You should contact the Special Purpose Fund Manager, WF Claims (Ireland) Limited, in relation to applying to the Assigned Risks Pool ("ARP") for cover. Further information on the SPF Manager and the Assigned Risk Pool can be found on the Society's website at www.lawsociety.ie/PII
- 4.40. Failure to obtain cover results in firms being declared a "defaulting firm" and such firms are required to close if cover cannot be obtained.

Confirmation of cover

- 4.41. Confirmation of PII cover for a firm must be provided to the Society within 3 working days of 1 December 2018. Therefore, confirmation of cover in the designated online form must be provided to the Society on or before **6 DECEMBER 2018**.
- 4.42. The Society has a facility whereby brokers can furnish the Society, on behalf of the firm, with confirmation of cover via the Society's website. Such confirmation must include your policy number, and confirmation of cover cannot be provided until the policy is actually in place.
- 4.43. As your firm has a statutory obligation to ensure such confirmation of cover is provided to the Society on or before 6 December 2018, you are responsible for ensuring that your broker provides the Society with confirmation of cover through the online system by that date.

- 4.44. You should also ensure that your broker has familiarised themselves with the online confirmation system, and has the necessary information to confirm cover online (such as their login and password) in advance of 6 December 2018.
- 4.45. It is noted that some firms who have confirmed PII cover to the Society during 2018 have a coverage period that extends past 30 November 2018. Such firms are still required to reconfirm cover for 2018/2019 with the Society by 6 December 2018.
- 4.46. Please note that your firm will not be reflected as having PII in place on the Society's "Find a Firm" online search facility until such time as the Society has received the required online confirmation of cover and a suitable disclaimer will be in place regarding the renewal period.

PII Helpline

- 4.47. The Society continues to operate the PII Helpline to assist firms in dealing with PII queries. The Law Society's PII helpline is available Monday to Friday 10am to 4pm to assist firms with PII queries at 01 879 8707 or piihelpline@lawsociety.ie.

Renewal resources

- 4.48. Renewal resources for the 2018/2019 indemnity period will be available to download from the Society's website at www.lawsociety.ie/PII later this year, and will include the common proposal form, list of brokers, list of insurers, the Participating Insurers Agreement, the current PII regulations, Assigned Risks Pool and Run-off Fund documentation and documentation from previous indemnity periods. This area will be updated frequently as more documentation becomes available.
- 4.49. Renewal resources for the current indemnity period, including lists of brokers and insurers are available on the Society's website at www.lawsociety.ie