

## **Guide to regulatory requirements for renewal of professional indemnity insurance**

The mandatory professional indemnity insurance (“PII”) renewal date is **1<sup>st</sup> December 2010**. The attention of solicitors’ firms is drawn to the following information.

More in-depth information on the changes to the PII regulations for the 2010/2011 indemnity period can be found in a separate [practice note on page 49 of the November 2010 Gazette](#).

This guide is intended as general guidance and does not constitute a definitive statement of the law.

### **Important points to note**

- A new indemnity period starts each year on 1<sup>st</sup> December and ends on 30<sup>th</sup> November in the following year.
- All existing cover expires on 30<sup>th</sup> November 2010.
- Cover must be renewed with effect from 1<sup>st</sup> December each year. This date is not negotiable.
- New practices should obtain cover from the date of commencement of the practice, to expire on the next occurring 30<sup>th</sup> November.
- Firms, rather than individual solicitors are covered.
- The PII regulations prescribe only the minimum level of cover required.
- Firms can agree any level of self-insured excess with their insurer. In the event of a claim, where the firm does not pay the amount of the excess to the client, it is paid by the insurer and then recovered from the firm.
- Your firm should consider whether the value and nature of the work carried out by your firm requires “top-up” cover and whether your firm should seek to limit by contract its liability to clients to the minimum amount permitted by law, which is €1.5 million for each and every claim.
- Firms providing legal services relating to the laws of any other jurisdiction should note that the minimum terms and conditions do not cover legal services relating to the laws of other jurisdictions. Such firms should therefore arrange to put additional cover in place if they consider it appropriate.
- PII is provided on a “claims made” basis, which means that a transaction that your firm believes requires additional cover will need that additional cover renewed in subsequent indemnity periods, as a claim in respect of the transaction may arise after the end of the indemnity period in which the transaction is carried out.
- Claims are covered only if they are notified to the insurer in the correct indemnity period, which is the indemnity period in which the claim is first made against your firm or the indemnity period in which your firm first notifies the insurer of circumstances that may give rise to a claim. Your firm is exposed to liability for the full amount of a claim if your firm does not notify the claim in the correct indemnity period.
- Cover for the defence costs of the solicitors for the insurer for dealing with a claim is not limited.

- Insurers cannot repudiate claims by non-financial institutions on any grounds, including fraudulent misrepresentation or non-disclosure. They must cover such claims but may pursue the firm subsequently.
- Statutory compensation or restitution to clients, such as may be ordered by the Solicitors Disciplinary Tribunal, is covered.
- Solicitors providing legal services solely outside the jurisdiction will not be required by the Law Society to have professional indemnity insurance cover in place.
- An exemption for in-house solicitors providing legal services only to their employer applies.

### **What firms should do with regard to the renewal of PII cover**

#### 1. Act immediately

- Mandatory renewal date is 1<sup>st</sup> December 2010.
- All firms must confirm cover by 15<sup>th</sup> December 2010.
- All firms, that have not already done so, should attend to all outstanding matters with a view to ensuring that cover is reviewed by 1<sup>st</sup> December 2010.

#### 2. Confirming your cover with the Society

- Confirmation of cover in the designated form must be provided to the Law Society within 10 working days after the due date for renewal each year and, therefore, all firms must confirm cover by 15<sup>th</sup> December 2010.
- Normally, the broker provides confirmation of cover, but the obligation is on each firm to ensure that this is done.
- Any firm that is unable to obtain cover in the market should, before expiry of its cover on 30<sup>th</sup> November 2010, notify the Law Society.

### **Defaulting firms**

- Any firm without confirmation of cover on 1<sup>st</sup> December 2010 will be a 'defaulting firm' until such confirmation is obtained and all firms, for which confirmation of cover is not received by the Law Society within **10 working days** of the renewal date of 1<sup>st</sup> December 2010 (that is, by 15<sup>th</sup> December 2010), will be classified as a 'defaulting firm'.
- If a firm is a defaulting firm, such a firm should use its best endeavours to regularise its position promptly and should seek to ensure that its cover, when renewed, is effective from the date of expiry of its previous cover with a view to mitigating the adverse consequences of defaulting firm status.
- The Assigned Risks Pool ("ARP") will provide defaulting firms with very limited PII cover.
- If claims should arise while a firm is a defaulting firm, which are paid by the ARP, the ARP will have recourse against the firm and its principals for recovery of the full amount of the claim, including defence costs.
- It is the policy of the Law Society to seek a High Court order compelling any defaulting firm, which does not regularise its position promptly, to cease practice.
- Obviously it is in the interests of all firms to avoid becoming a defaulting firm.

## **Firms ceasing in practice – succeeding practices and run-off cover**

- Run-off cover is coverage that includes the minimum terms and conditions for a firm that has ceased to carry on practice, where the succeeding practice rule does not apply.
- If your firm ceases practice without there being a succeeding practice, your firm will require run-off cover for two years, for which your firm will have to pay your current insurer.
- The concept of ‘succeeding practice’ is explained in a special article on the [succeeding practice rule](#).
- The rules in relation to succeeding practices will change for the next indemnity period and reference should be made to the [practice note on page 49 of the November 2010 Gazette](#) regarding the changes.
- In brief, generally, run-off cover should only be an issue for sole principals. If you are a sole principal ceasing practice, and if you have the opportunity to do so, you should be able to avoid the need for run-off cover if you take on a partner, merge your practice, or arrange for your practice to be taken over prior to ceasing practice.
- Sole principals considering ceasing practice (including sole principals who have recently commenced practice) need to plan for cessation of practice, either for securing a succeeding practice or for financing the cost of run-off cover.
- The contractual terms governing the cost of run-off cover are those that apply under the policy in force on the date your firm ceases practice.
- Run-off cover must be provided automatically by the last insurer, with the run-off cover premium terms for each year being set out in quotations and renewal notices for the normal cover.
- If your firm ceases practice on or before 30<sup>th</sup> November 2010, the cost of run-off cover will be fixed by your firm’s current policy.
- If your firm ceases practice on or after 1<sup>st</sup> December 2010, the cost of run-off cover will be fixed by your firm’s new policy in force from 1<sup>st</sup> December 2010.
- The cost of run-off cover is a competitive issue. The cost may vary considerably from insurer to insurer. Seeking competitive quotes may reap significant benefits in terms of lower run-off costs.
- Firms, and in particular all sole principals intending to cease practice after 30<sup>th</sup> November 2010, should pay particular attention to the information relating to premium terms for run-off cover contained in quotations or renewal notices. All quotations and renewal notices are required to contain the following notice:

“NOTICE TO PROPOSERS FOR INSURANCE: YOU SHOULD BE AWARE THAT BY ACCEPTING A QUOTATION AND TAKING OUT A POLICY, THIS INSURER BECOMES OBLIGED,

(A) SHOULD YOUR PRACTICE CEASE DURING THIS POLICY YEAR WITHOUT A SUCCEEDING PRACTICE; OR

(B) SHOULD YOUR PRACTICE CEASE DURING THIS POLICY YEAR WITH A SUCCEEDING PRACTICE WHERE SUCH SUCCEEDING PRACTICE HAS INSURANCE IN PLACE AND AN ELECTION IS MADE TO OBTAIN RUN-OFF COVER IN RESPECT OF YOUR CEASING PRACTICE

TO PROVIDE RUN-OFF COVER FOR A TWO-YEAR PERIOD AT THE PREMIUM RATES CALCULATED IN ACCORDANCE WITH THE PROVISIONS OF THIS POLICY. CONSEQUENTLY, YOU SHOULD ENSURE THAT THE RUN-OFF PREMIUM TERMS ARE SATISFACTORY TO YOU BEFORE ENTERING INTO A POLICY.”

- The best course of action in any individual case will depend on weighing the specific factors applicable to that case, and no general advice can be given. Any sole principal facing these decisions should seek the advice of an insurance broker specialising in solicitors’ PII; view a [list of brokers](#) who have notified the Law Society that they offer to arrange solicitors’ PII.

#### **For further information**

View the designated form for [confirmation of cover](#).

Any queries relating to the PII regulations should be addressed to the Law Society PII Helpline for Solicitors at **01 879 8790** or [piihelpline@lawsociety.ie](mailto:piihelpline@lawsociety.ie).