Professional Indemnity Insurance

Guide to Insurers

Insurers

1.1. Insurers provide a transfer of risk in exchange for an insurance premium, in accordance with the terms of the insurance policy. Insurers are private companies seeking to maximise profits for the benefit of their shareholders and can be accessed in the solicitors' PII market in this jurisdiction through brokers.

1.2. Very often, when asked for their insurance details, firms give the details of their broker and are unable to distinguish between their broker and their insurer. The broker organises and places the insurance, but the policy and cover is provided by the insurer, not the broker. Firms are advised to keep a record of both their insurer and their broker, and to build a relationship with their insurer, as it is the insurer that will be needed if a claim is made against the firm.

Participating insurers and the Participating Insurers Agreement ("PIA")

1.3. The PIA is a contract that is entered into each indemnity period that requires insurers to offer solicitors' PII policies in accordance with the minimum terms and conditions. The PIA for the upcoming indemnity period, which includes the minimum terms and conditions, can be found on the Society's website at www.lawsociety.ie/PII.

1.4. With regard to the regulation of participating insurers and the Society's role, the following should be noted:

a) The Society does not vet, approve or regulate insurers.

b) Insurers are supervised and regulated by the Central Bank of Ireland.

c) In accordance with EU law, the Central Bank of Ireland is obligated to permit insurers regulated in other EU member states to trade in Ireland through the 'passport system'. Where an insurer from another jurisdiction is passported into the Irish system, the insurer is regulated by the financial regulator in their home jurisdiction and subject to the minimum standards and requirements of that jurisdiction.

d) The Society has introduced a minimum financial strength requirement from a recognised rating agency for all participating insurers of A (Standard & Poor's, Fitch) or equivalent (A- A.M. Best, and A3 Moody's). The recognised rating agencies are Standard & Poor's, Fitch, A.M. Best, and Moody's. The Society also has the power to waive the minimum financial rating requirement for participating insurers subject to such terms and conditions as the Society deems fit, such as provision of a suitable parental guarantee from a rated parent company.

e) The Society is not responsible for policing the financial stability of any insurer and does not undertake any solvency checks on insurers.

f) The Society is obliged to permit any insurer who meets the following requirements to become a participating insurer:

(I) the insurer is authorised by the Central Bank of Ireland to write non-life insurance in Ireland;

(II) the insurer has signed the Participating Insurers Agreement[1] for the relevant indemnity period in a timely manner; and

(III) the insurer meets the Society's minimum financial strength rating requirement.

1.5. Only participating insurers are permitted to write mandatory solicitors' PII insurance in the market. A list of participating insurers is provided below. Insurers are not required to be participating insurers in order to write top-up cover for the firm.

1.6. Participating insurers were previously known as "qualified insurers". The Society changed the title to participating insurers in the 2013/2014 indemnity period, which title remains in place for the upcoming indemnity period, to more accurately reflect and emphasise the Society's limited role regarding insurers in the solicitors' PII market and to dispel the mistaken impression of approval or financial strength that may have been incorrectly inferred from the title.

1.7. You should note the importance of considering whether the insurer will be able to meet claims under their PII policy when making the business decision of which insurer to choose. You should be under no illusions regarding the potential serious personal and financial consequences that can result from that decision. It should be noted that a financial rating does not guarantee the solvency of an insurer, but does provide an independent indication of the financial strength of an insurer.

1.8. If your insurer is U.K. based, you should seek advice from your broker and information regarding the insurer's contingency plans in the event of a no-deal Brexit, which could interfere with the ability of the insurer to service policies and pay claims post Brexit. Most U.K. based insurers have indicated that they will transfer all policies for EEA-based clients to their EEA branches in advance of Brexit.

What is a financial rating and how do I find out the financial rating of a participating insurer?

1.9. Financial ratings are obtained by insurers following assessment of their financial strength through an independent process by a rating agency and it is therefore an objective measure and indication of the financial strength of the insurer. The four recognised rating agencies for the purposes of the mandatory minimum financial strength rating requirement for participating insurers are Standard & Poor's, Fitch, A.M. Best, and Moody's.

1.10. The mandatory minimum financial strength rating for participating insurers in the 2020/2021 indemnity period is an A rating (Standard & Poor's, Fitch), A- (A.M. Best) and A3 (Moody's).

[1] Formerly known as the "Qualified Insurers Agreement". This is a contract that insurers enter into with the Society each year that requires participating insurers to offer solicitors' PII policies in accordance with specified minimum terms and conditions.

1.11. While insurers, both unrated and rated, are subject to regulation and oversight by the home state regulator, different states have different liquidity requirements and levels of scrutiny and oversight. Participating insurers may be passported in from states with lower regulatory standards or requirements. Therefore, firms are advised not to depend on the assessment of the insurance regulator, but to also seek an independent, objective indication of the financial strength of the insurer.

1.12. A financial rating can be thought of as a 'health warning' giving an indication of the financial strength and stability of an insurer, and therefore its likely ability to meet claims under the PII policy. Key factors assessed by the rating agencies include the insurer's liquidity, risk, operating performance, capitalisation, and financial performance, management and flexibility.

1.13. Participating insurers are required to disclose their financial rating, or absence thereof, to firms when issuing quotations. This requirement was introduced in the 2011/2012 indemnity period and will continue to be a requirement for participating insurers for the 2020/2021 indemnity period. Participating insurers are required to make such a disclosure in order to:

(a) allow firms to make a more fully informed decision on their choice of insurer; and

(b) ensure full transparency for the profession in relation to participating insurers meeting the required minimum financial strength rating requirement.

1.14. In the 2013/2014 indemnity period, which change remains in place for the upcoming indemnity period, the Society introduced a requirement for participating insurers to provide the Society with details of their financial rating, and the jurisdiction in which they are regulated, as at the date the Participating Insurers Agreement is signed, together with a requirement to notify the Society in writing immediately if any of this information changes. This information is published on the Society's website for the upcoming indemnity period to enable firms to take such information into account when choosing their insurer.

1.15. It should be noted that the guide will only reflect an insurer's financial rating, or lack thereof, at a specific date, and therefore firms are advised to check the financial rating on any quotes provided, and to seek confirmation of the insurer's rating from their broker.

Why should I care about the financial strength of my insurer?

1.16. The financial strength of your participating insurer will ultimately determine whether claims made against your firm will be paid and should, therefore, be one of the most important factors when choosing an insurer.

1.17. Each principal and partner in private practice is responsible for their own business decisions, including choice of insurer, and must accept the consequences of those decisions for their firm. Each principal and partner of the firm should also consider their duty of care to each employee of the firm and, in the case of succeeding practices, former principals and partners, who will also be exposed to the consequences of loss of indemnity due to the insolvency of the firm's insurer, should it occur.

What are the consequences if my insurer becomes insolvent, or a non-performance event occurs?

1.18. The immediate consequences of the insolvency of an insurer, or the occurrence of a non-performance event, for are set out in the PII regulations as follows:

(a) any firm insured by the relevant insurer will be required, within 30 working days of the insolvency or non-performance event, to obtain and pay for insurance with another participating insurer in the market or with the Assigned Risks Pool ("ARP") if the firm is an ARP eligible firm; and

(b) if the firm fails to obtain alternative cover within 30 working days, they will be obliged to close.

1.19. There are a number of serious financial consequences for the firm that can arise out of this:

(a) Firms will require access to substantial funds at short notice to continue in practice.

(b) There is no guarantee that any participating insurer in the market will offer the firm replacement cover.

(c) Firms that are unable to afford the premium for replacement cover will be unable to obtain replacement cover from the market.

(d) Firms that are unable to obtain replacement cover in the market may apply to the ARP only if they are ARP eligible firms as defined in the abovementioned regulations. ARP cover will be at a lower level than that available in the market, including no cover for claims by financial institutions and an aggregate limit of €1.5 million.

(e) If a firm is accepted by the ARP, they will be required to pay the ARP premium in full. The ARP premium is calculated according to the ARP premium schedule which is available on the Society website. The ARP premium will normally significantly exceed normal market rates reflecting the high level of risk attached to a firm unable to obtain cover in the market. Any firm unable to afford market rates is therefore unlikely to be able to afford the ARP premium.

(f) Any firm that does not obtain replacement cover from the market, or any firm accepted by the ARP that does not pay the ARP premium in full will be declared a defaulting firm and will be required to close.

(g) If the firm does not close, the Society will apply to the High Court for an order compelling the firm to close.

(h) Claims made against the firm will not be fully covered with potentially devastating financial consequences for the principals of the firm who will be directly liable for any uncovered claims with possible consequential judgments and bankruptcy. It should be noted that the practising certificates of bankrupt solicitors are immediately and automatically suspended in accordance with the provisions of section 50 of the Solicitors Act 1954.

If my insurer goes insolvent, won't the Society or the Insurance Compensation Fund pay the claims?

1.20. The Society does not vet, approve or regulate insurers and has absolutely no legal responsibility for unpaid claims by either an insurer or an uninsured firm. The Society will not provide any compensation or meet the claims of insurers or firms that are unable to honour their claim payments. The choice of insurer is a business decision for the principals and partners of each firm, and they alone are responsible for the consequences of that decision.

1.21. The Insurance Compensation Fund was established under the Insurance Act 1964 for the purpose of providing a fund from which certain liabilities of insolvent insurers can be met. Should a participating insurer become insolvent, Irish policyholders should be able to benefit from the Insurance Compensation Fund should the need arise, subject to certain limitations. These limitations include:

(a) a cap per claim on the amount of any payment which must not exceed 65% of the amount due under the policy or €825,000, whichever is the lesser; and

(b) normally, no compensation where the client is a body corporate.

1.22. Consideration should be given to the restrictions in place on payments from the fund when considering the protections that may be afforded to your firm and clients in the event of an insolvency of a participating insurer, in particular due to the direct liability of each partner and principal of the firm for any unpaid claims.

What factors should I consider when choosing an insurer?

1.23. Firms should obtain quotes from all insurers willing to offer cover and then assess these quotations based on a range of factors including the following:

(a) Financial rating of insurer – this is an indication of the financial strength of the insurer, which determines the ability of the insurer to meet its obligations to pay claims against your firm. This should be one of the foremost factors when choosing an insurer due to the devastating financial and personal consequences of your insurer becoming insolvent. While financial ratings are not a guarantee of solvency, they do give an indication and objective measure of the financial strength of the insurer. Each participating insurers is required to have a minimum financial rating of A (Standard & Poor's, Fitch) or equivalent from a recognised rating agency (Standard & Poor's, Fitch, A.M. Best, Moody's).

(b) Price – The Society understands that there are commercial pressures on firms to choose the 'cheapest' quote for their PII. While the price of insurance is an important factor, firms are strongly advised to weigh the cost of a quote against the financial stability of the insurer, given the grave consequences of insurer insolvency for a firm. Opting for a lower premium is false economy if the insurer becomes insolvent and the firm is required to pay a second premium for the year.

(c) Fitness for purpose – Firms should consider, and obtain advice from their broker, whether any insurer has the required level of knowledge of the specialised requirements of the solicitors' PII market.

(d) Brexit contingency plans – If the insurer is currently U.K. based, firms should obtain advice and information from their broker regarding the contingency plans that the insurer has in place in the event of a no-deal Brexit, after which U.K. based insurers would not be permitted to service policies or pay claims to EEA based clients. Insurers have put contingency plans in place to ensure protection of their clients which involve transfer of EEA-based policies to their EEA branches in advance of the Brexit date. Your broker should provide full details of these contingency plans from your insurer and provide advice on same.

(e) Advice from brokers – Firms should have a robust discussion with their broker regarding the insurers they are proposing to place your business with and, in particular, the capacity of that insurer and their willingness to pay claims which, in many cases, may take years to resolve. Firms should ask brokers to provide some guidance on the insurer's financial condition and ability to meet its obligations for the entirety of the indemnity period. Firms should be wary of any attempt by brokers to provide reassurance by reference to an insurer's reinsurance arrangements as the firm will not have direct access to these reinsurers in the event of the insurer's insolvency. In most cases, reinsurance arrangements simply constitute an asset for distribution to creditors in the event of an insolvency.