Excerpt from the Fiduciary Rules

PART 4 - PRUDENTIAL

4.1 Insurance arrangements

(1) A licensed fiduciary must maintain professional indemnity insurance ("PII") cover which is commensurate with the size and nature of its business.

> Guidance
>
> For the avoidance of doubt, the PII policy can be in the form of commercial insurance as commonly seen in the market or captive insurance. Both forms are accepted given that the risk is transferred from the licensee or its group. The policy may or may not have the term "professional indemnity insurance" included in its description.
>
> The consideration by a licensee of its insurance requirements should be clearly documented at local board or senior management level to demonstrate how the decision was made. The Commission expects all licensees, whether or not they are part of organisations with offices elsewhere, to consider the insurance requirements for the entities in the Bailiwick of Guernsey.
>
> Where a local operation is part of a group and the local board or management do not consider the cover available to the Guernsey licensee to be adequate the Commission expects the board or management to make arrangements to maintain appropriate cover. This may include purchasing a separate policy for the local operation.

(2) ~~The~~ Subject to Rule 4.1 (2A), the minimum indemnity limit for any one claim~~, or for aggregate claims, must be the greater of~~ and in the aggregate must equal or exceed the greater of –

(a) three times turnover from regulated activities; or

(b) £1,000,000,

where the turnover from regulated activities shall be taken from the ~~previous year's~~ latest audited financial statements or, for new businesses, estimated turnover for the first year.

> Guidance
>
> The turnover from regulated activities should be taken from the latest audited financial statements at the time of PII renewal.
>
> For the avoidance of doubt, insurance cover based on a prior year's audited financial statements does not need to be amended before the next annual renewal following the release of the following year's financial statements. However, a licensee should consider whether to arrange additional cover in the event that the audited financial statements show a material increase in regulated income.

(2A) A licensed fiduciary is not required to have aggregate insurance cover exceeding £10,000,000 provided that the Board of the licensee has considered and decided that such level of cover is appropriate and sufficient for its business. The licensee must be able to evidence the board assessment if requested by the Commission.

> Guidance
> For the avoidance of doubt, Rule 2A is also applicable to a licensee which is part of a group and relies on PII cover provided by the group. For this case, the consideration should ensure that the group PII policy cover is appropriate for the licensee.

(2B) Where the licensed fiduciary also carries out unregulated activities, the licensed fiduciary must consider whether the minimum indemnity limit of its PII policy and scope of the PII cover are appropriate for its business as a whole, taking into account possible claims that may also arise from non-fiduciary business.

(2C) Where a licensed fiduciary also holds a licence under another Regulatory Law the licensed fiduciary should meet the PII rules under whichever of the respective regimes requires the higher (or highest) aggregate minimum indemnity limit, unless otherwise instructed by the Commission.

~~(3) Any excess must not exceed 3% of turnover from regulated activities.~~

> Guidance
>
> Excess: Consideration should be given to the excess per claim on the PII policy and whether it is appropriate for the licensee taking into account its financial position. Specifically, the licensee should ensure that it will be able to fund the excess in the event that a claim is made on the PII policy.

(4) For a licensed fiduciary, which holds a primary or secondary fiduciary licence, the Commission will consider arrangements under group policies.~~ or, where its parent or ultimate parent is of sufficient stature, for self-insurance.~~ Where a licensed fiduciary relies on captive insurance to meet requirements under this Part, the captive insurer must be licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 or a captive insurer of an equivalent status in Jersey, Gibraltar, Bermuda, Isle of Man or a county which is a full member of the OECD.

(5) A licensed fiduciary must maintain at all times PII cover for - ~~PII policies must include cover against –~~

(a) negligence, errors, or omissions by the licensed fiduciary~~;~~ or its employees;

(b) any liability for the dishonest or fraudulent acts of employees which may fall on primary or secondary fiduciary licensees;

(c) liabilities of its employees who, in the course of their duties to the licensed fiduciary, perform functions in their own names; and

(d) liabilities which the licensed fiduciary might incur in any jurisdiction in which it ~~carries on business~~ should reasonably foresee that it may be held liable for damages and costs;

(e) where relevant, ombudsman awards; and

(f) legal defence costs.

Guidance

Rule 4.1(5)(a) – The Law defines "employee" as "*an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment*". For the purposes of this rule, the PII policies should therefore cover current and former employees* and a person under contract to perform services or duties to or on behalf of the licensee.
*Time limitation may apply to the period of cover for former employees, depends on the date after they ceased to be employed.

Rule 4.1(5)(b) – In meeting this rule, some licensees may rely on a different insurance instrument for indemnity against such liabilities, provided that the licensee is satisfied with such insurance arrangement. PII policy wordings vary greatly, licensees should consider whether its PII policy provides the required scope of cover. For instance, these may be covered under "Crime", "Fraud" or "Fidelity" under its policy. Some PII policies may contain limitation on "dishonest or fraudulent acts" such as a carve out on deliberate dishonest acts. Where there is such limitation or exception, the licensed fiduciary should assess whether the policy is considered appropriate for its business.

Rule 4.1(5)(e) applies to licensees which carry out activities within scope of the CIFO such as PSPs.

(6) Licensed fiduciaries must also ensure that they hold insurance policies which cover -

(a) loss and theft of data; and

(b) liability for the replacement, restoration, or reconstruction of data.

(7) A licensed fiduciary must have adequate procedures in place to ensure compliance with all terms and conditions set out in its PII policy particularly in relation to the timely notification of events, to its insurer, which may lead to a claim on the policy.

Guidance Note:

For a licensed fiduciary which holds a personal fiduciary licence the insurance arrangement may be provided for by his or her client.