

Excerpt from the Insurance Managers Rules

PART 7 – CONDUCT OF BUSINESS

7.5 Professional indemnity insurance

7.5.1 A licensee must maintain adequate insurance at all times, commensurate with the size and nature of its business activities. Such cover must include professional indemnity insurance and insurance against employee dishonesty or fraud as required by this section.

7.5.2 Minimum requirement

7.5(1) A licensee must maintain the minimum cover as laid out in subsection (2). The board is responsible for ensuring that the insurance arrangements for the licensee are adequate. Where the licensee concludes that amount of insurance required for the size and nature of its business is greater than the maximum amount in (2)(b) then the amount of cover the licensee is required to maintain is the higher amount.

(1)(2) Subject to subsection (3) Every licensee must maintain professional indemnity insurance and employee dishonesty or fraud insurance with the following minimum limits –

(a) on the basis of each and every loss, cover of at least ~~£250,000~~£1,000,000; and

(b) on an annual basis, £1,000,000 or three times fee income from regulated activities income, whichever is the greater.

Guidance

The income from regulated activities should be based on the latest audited financial statements at the time of the relevant insurance 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 is expected to consider whether additional cover should be arranged with immediate effect in the event that the audited financial statements show a material increase in regulatory income.

(3) Where the licensee also carries out unregulated activities, the licensee must consider whether the minimum indemnity limit of its insurance policies and scope of the insurance cover are appropriate for its businesses as a whole, taking into account possible claims that may also arise from unregulated businesses.

(4) Notwithstanding Rule 7.5.2(2), above, a licensee 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's assessment if requested by the Commission.

Guidance

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.

~~(b)~~

(5) Where the deductible or excess exceeds £20,000 on the basis of each and every loss, the minimum capital requirement will increase to 125% of the deductible or excess.

~~(2)~~

- (6) A licensee must maintain at all times cover for:
- (a) negligence, errors or omissions by the licensee or its employees;
  - (b) any liability for the dishonest or fraudulent acts of employees which may fall on the licensee;
  - (c) liabilities of its employees who, in the course of their duties to the licensee, perform functions in their own names;
  - (d) liabilities which the licensee might incur in any jurisdiction in which it should reasonably foresee that it may be held liable for damages and costs;
  - (e) where relevant, ombudsman awards; and
  - (f) legal defence costs.
- (7) The retroactive date for the insurance arrangements in this section must be the date the licensee was licensed by the Commission.

7.5.27.5.3 Notifications to the insurer

- (1) A licensee must –
- (a) when applying for cover, notify his professional indemnity insurer, through their professional indemnity insurance broker, of all material facts, which must include –
    - (i) the details of any condition imposed on the licensee under section 7 of the Law;
    - (ii) the revocation of the licensee's licence under section 9 of the Law;
    - (iii) any regulatory penalty taken by the Commission against the licensee, or any of its directors or employees, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>8</sup> ("the FSC Law") or any of the Regulatory Laws;

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<sup>8</sup> Order In Council No. XXX of 1987.

- (iv) any prohibition order made against the licensee, or any of its directors or employees;
  - (v) any criminal proceedings commenced against the licensee, or any of its directors or employees; and
  - (vi) any criminal or regulatory investigation or formal enquiry which involves the licensee, or any of its directors or employees;
- (b) ensure that they comply with all warranties applying at the date of the commencement of the professional indemnity policies and any continuing warranties applying during the duration of the professional indemnity insurance policy;
  - (c) ensure that they make all notifications and disclosures which are required to be made to their professional indemnity insurers during the duration of the policy pursuant to its terms and conditions.
- (2) A licensee must notify their professional indemnity insurers, through the broker where appropriate, within fourteen days of the following events, or such earlier period as is specified in the professional indemnity policy, -
- (a) the details of any conditions imposed on the licensee under section 7 of the Law;
  - (b) the revocation of the licensee's licence under section 9 of the Law;
  - (c) any regulatory penalty taken by the Commission, against the licensee, or any of its directors or employees under the Law, the FSC Law, or any of the Regulatory Laws;
  - (d) any prohibition order made against the licensee, or any of its directors or employees;
  - (e) any criminal proceedings commenced against the licensee, or any of its directors or employees; and

- (f) any criminal or regulatory investigation or formal enquiry which involves the licensee, or any of its directors or employees.
- (3) A licensee must notify the Commission of the following events immediately –
- (a) any actual or purported termination, avoidance, or invalidation of the licensee's professional indemnity cover; or
  - (b) any notification made by a licensee to his professional indemnity insurers with respect to a claim, or potential claim, which may be made by the licensee under its professional indemnity policy.

#### 7.6 Reporting to the Commission

- (1) All insurance managers must obtain prior written consent, from the Commission, for any changes to outsourcing arrangements.
- (2) All insurance managers must inform the Commission, within seven days, of –
  - (a) the instigation of any criminal proceedings against the licensee, any of its directors or employees;
  - (b) any involvement, in any way, of any of its directors or employees in any regulatory or criminal investigation or enquiry; and
  - (c) any material change to the business plan.
- (3) All insurance managers must notify the Commission of the following events and provide a plan for remedial action –
  - (a) any breaches of a solvency or insurance requirement and any other breach of the Minimum Criteria for Licensing under Schedule 4 of the Law; and