

PROFESSIONAL INDEMNITY INSURANCE FACTSHEET

Following the recent agreement, Chartered Certified Accountants practicing probate can now be regulated by CILEx Regulation. The professional indemnity insurance requirements are contained in Annex 4 of the CILEx Regulation-ACCA Handbook.

This factsheet has no regulatory status. It is issued for guidance purposes only, and in the event of any conflict between the content of this factsheet and the content of the CILEx Regulation-ACCA Handbook, the latter shall at all times take precedence. Therefore, this factsheet should not be regarded by an ACCA member or CILEX Practitioner (ACCA-Probate) as a substitute for familiarising himself or herself with the appropriate regulations or, where necessary, obtaining specific advice concerning a specific situation.

INTRODUCTION

Professional indemnity insurance (PII) policies provide cover for practitioners against claims for professional negligence. To ensure that practitioners have the means to meet any claims of this nature, CILEx Regulation requires all Chartered Accountants practicing probate under their regulation to obtain a minimum level of insurance cover.

RESERVED LEGAL ACTIVITIES

Firms holding a legal activities certificate that authorises the firm to carry on the reserved legal activity of non-contentious probate as a CILEX-ACCA Probate Entity are required to have a minimum level of indemnity of £500,000 in respect of each and every claim.

However, firms should consider the risk profile of their work and their clients and ensure that the level of cover for PII and FGI provides the appropriate level of cover for legal activities.

CILEx Regulation will expect to see a policy covering work by both the ACCA Accountancy firm and the CILEX-ACCA Probate Entity. This is to ensure that all work connected with an estate is fully covered.

LEVELS OF COVER

The level of indemnity required by a CILEX-ACCA Probate Entity is calculated in relation to the annual fee income. The firm must maintain the level of income received from probate activities in line with their insurer's expectation, but certainly at less than 20% of all their firms total fee income.

Currently the insurers are looking at closer to 10/15% as an acceptable figure. Should this figure be close to being exceeded then the firm is expected to advise the insurer and CILEx Regulation.

Where a practitioner is in partnership, or has fellow directors in an incorporated firm, or employs full-time or part-time staff, cover must also include fidelity guarantee insurance (FGI).

PII should provide cover in respect of all civil liability incurred in connection with the conduct of a firm's business by the partners (or members and designated members of a limited liability partnership), directors or employees.

FGI must include cover against any acts of fraud or dishonesty by any partner, director or employee in respect of money or goods held in trust by a firm.

The limit of indemnity required will be dependent upon the firm's 'total income' for the previous accounting year. The regulations define 'total income' as the aggregate of the firm's professional charges and all other income received by the firm in the course of the firm's business. Commissions that are retained by the business must be included in the income figure.

The regulations require that the minimum limit of indemnity on PII in respect of each and every claim must prescribe the following formulae for determining the required level of cover:

Total income of up to £200,000

The limit of indemnity on PII in respect of each and every claim must be the greatest of:

- 25 times the largest fee raised during the previous accounting year; and
- £500,000.

Total income of over £200,000 and up to £700,000

The limit of indemnity on PII in respect of each and every claim must be the greatest of:

- £500,000
- the aggregate of £300,000 and the firm's total relevant income; and
- 25 times the largest fee raised during the previous accounting year.

Total income of over £700,000

The limit of indemnity on PII in respect of each and every claim must be the greatest of:

- £1 million; and
- 25 times the largest fee raised during the previous accounting year.

The 'largest fee' in all cases does not relate to the largest single invoice but to the highest cumulative amount of fees raised to a particular client during the year.

FIDELITY GUARANTEE INSURANCE

PII shall provide cover in respect of all civil liability incurred in connection with the conduct of the firm's business by the partners, directors, members and designated members of limited liability partnerships or employees and FGI shall include cover against any acts of fraud or dishonesty by any partner, director or employee in respect of money or goods held in trust by the firm. For the avoidance of doubt such FGI may, but need not, form a single policy with such PII and all such PII and FGI must remain in force for all of the period during which a relevant practising certificate is held. The annual limit of indemnity to be provided by FGI cover must be at least £50,000 in respect of each and every claim. The maximum permitted uninsured excess for PII and FGI is the lower of £20,000 per principal and 2% of the level of indemnity for each and every claim.

The regulations set the minimum level of PII required to be held by a practitioner. Practitioners should consider the risk profile of their work and their clients and determine whether or not they should carry PII in excess of the minimum required under the regulations

DOCUMENTATION

Practitioners are required to provide details of their PII and FGI policies when applying for, or renewing, certificates/licences. Practitioners must keep records of insurance claims made under the policies, and these records, and the policy itself, may be inspected by CILEx Regulation.

CESSATION OF PRACTICE

Persons subject to Annex 4(1) shall ensure that arrangements exist for the continued existence of PII and, as required, FGI for a period of six years after they cease to engage in public practice. Such PII and, as required, FGI shall be on terms satisfying the requirements of this regulation as applied to their business during the year immediately preceding such cessation.

EXCEPTION

An individual who is not a partner or director of the firm in which he works, or member or designated member of a limited liability partnership, but holds a practising certificate and is responsible for public practice work carried on by the firm, shall be deemed to hold PII in accordance with Annex 4(1) where the firm (or all of them if more than one) in which he works:

- is a person subject to Annex 4(1) and holds PII in compliance with Annex 4(1); or
- holds PII which CILEx Regulation regards as adequate.

ACCEPTABLE INSURANCE COMPANIES

Responsibility for obtaining adequate cover lies with an individual practitioner and may be put in place with any reputable insurance company or underwriter. In the UK, a scheme for members had been negotiated by ACCA with Lockton, 6th Floor, Trinity Quay, 2 Avon Street, Bristol, BS2 0NB. Tel: +44 (0)117 906 5057. Further details can be found at <https://www.locktonaccountants.co.uk/affiliate/acca-members-scheme.html>

Other brokers are known to offer professional indemnity insurance policies and the ACCA can provide details to their members. However, please note that this does not indicate any endorsement on the part of ACCA or CILEx Regulation nor any guarantee that the policies offered will meet ACCA's or CILEx Regulations regulatory requirements.