

## **Professional Indemnity Insurance**

**S.I. No. 127 of 2016**

### **COMPANIES ACT 2014 (PROFESSIONAL INDEMNITY INSURANCE) (LIQUIDATORS) REGULATIONS 2016**

The Society has issued this guidance to raise the profession's awareness in relation to a new set of regulations, namely [The Companies Act 2014 \(Professional Indemnity Insurance\) \(Liquidators\) Regulations 2016 \("liquidators' PII regulations"\)](#), concerning professional indemnity insurance ("PII") cover requirements for liquidators, which are due to come into effect on 1 June 2016, and their interaction with PII cover for solicitor firms.

In accordance with the Companies Act 2014 and following a consultation process, the [Irish Auditing and Accounting Supervisory Authority \(IAASA\)](#) has made Regulations setting out PII cover requirements for liquidators.

The following in relation to the liquidators PII regulations should be noted:

1. Regulation 3 deals with the scope of the cover which is not equivalent to scope of cover provisions in clause 2 of the current solicitors' PII minimum terms and conditions. The liquidators' PII regulations have adopted a single trigger mechanism with regard to claims, in that a claim is only required to be made against the insured during the period of cover, or circumstance notified to the insurer during the period of cover. However, solicitors' PII regulations have a double trigger, in that a claim or circumstance is required to be made and notified to the insurer during the period of cover. As the solicitors' PII regulations do not comply with the liquidators' PII regulations on this matter, cover will need to be amended to provide for the single trigger mechanism.

There is also a disparity between the regulations with regard to grace period under regulation 3. Under the solicitors' PII regulations a claim must be notified to the insurer within the coverage period or within 3 working days following the end of the coverage period. There is no provision for a 3 working day grace period under the liquidators' PII regulations.

2. Regulation 4 deals with the minimum level of cover, which is equivalent to that in place under the solicitors' PII regulations, at €1.5 million each and every claim. However, regulation 4(2) of the liquidator's PII regulations requires a limit of liability equal to at least the estimated realisable value of the assets of the company which is being wound up, as estimated by the insured. The estimated realisable value of the assets could be significantly more than €1.5 million and, as such, would require that solicitor liquidators put top-up cover in place.
3. Regulation 5 deals with self-insured excess, and has equivalent provisions to those in the solicitors' PII regulations. It should be noted that the solicitors' PII regulations expressly provide for multiple claims to be treated as one claim for the purposes of

self-insured excess. This is not expressly stated in the liquidators' PII regulations, but it seems clear that this could be agreed between the liquidator and the insurer as part of the terms of the insurance policy.

4. Regulation 6 deals with maintenance of insurance in run-off. Under the liquidators' PII regulations, liquidators are required to maintain cover for 6 years post cessation of practice. Solicitors' run-off cover, as provided by the Run-off Fund, is of indefinite duration for so long as the Run-off Fund exists. As such, solicitors' firms which cease practice are likely to be provided with a much longer level of run-off cover than what is required by the liquidators' PII regulations. Solicitors' firms which have cover from the Assigned Risks Pool at the time they cease to practice would only have run-off cover of €1.5 million in the aggregate. Such firms may require a significant increase in the level of run-off cover.
5. Regulation 8 deals with cover for dishonest or fraudulent acts or omissions. The liquidators' PII regulations have an equivalent standard to the solicitors' PII regulations in relation to the respective exclusions of the insurer's civil liability for fraudulent or dishonest acts. However, the liquidators' PII regulations allow the insurer to avoid cover where it can be shown that a dishonest or fraudulent act or omission was committed or condoned by the liquidator. The solicitors' PII regulations go further in that they allow the insurer to avoid cover in respect of an insured who can be shown to have committed or condoned a dishonest or fraudulent breach of the insurance, and also provide that the insurer is entitled to be indemnified in respect of any sums paid by the insurer in connection with the insurance. In addition, the solicitors' PII regulations contain a separate provision concerning the imputation of a non-disclosure, misrepresentation, breach, dishonesty, act or omission to a company, where it is committed or condoned by all directors and officers of that company. There is no equivalent provision in the liquidators' PII regulations.
6. Regulation 9 deals with endorsements on existing policies, and expressly acknowledges existing PII policies. The liquidators' PII regulations require practitioners to obtain an endorsement on their existing PII policy to the effect that the existing insurance meets the requirements of the liquidators PII regulations. As such solicitor liquidators should ensure to obtain an endorsement or top-up to cover any gaps in cover between solicitors' PII requirements and liquidator PII requirements.