



A review of ICAEW's Professional Indemnity Insurance Requirements

BACKGROUND

ICAEW is conducting a review of its professional indemnity (PII) insurance requirements. The aim is to ensure that the arrangements remain fit for purpose and provide adequate protection to the public while being mindful of the cost to the profession. Several issues have accelerated the need for review of ICAEW's PII arrangements including:

- The changing nature of the structure of firms and their insurance arrangements
- Financial capacity of members and entities to retain (self-insure) risk
- Pressure to manage the cost of insurance
- An increase in firms unable to source qualifying insurance

KEY AREAS FOR CONSIDERATION

The Professional Indemnity Insurance Committee (PIIC) has confirmed that focus should be given to the following key areas:

- **How much insurance** should firms be required to have, and how should the amount be calculated? Should this vary depending on firm size?
- How to address the use of **large commercial insurance programmes** including the use of captive insurers
- What **run-off cover** should be required?
- Firms' **inability to obtain** qualifying insurance and conditions for dispensations

As part of ICAEW's review we are inviting feedback from you regarding your experience of navigating and applying the current insurance requirements. We have listed below some of the key questions which we would like to discuss with stakeholders including areas which we would value your feedback.

To aid discussion, we have also enclosed a summary of the current requirements and links to helpful resources, including the PII Regulations.

DISCUSSION

Some of the key questions we would like to discuss with stakeholders, including areas which we would value your feedback, are summarised below:

	LEVEL OF COVER
1.	What is an appropriate minimum level of cover? Should there be a flat rate of cover for all firms, such as used by the Solicitors Regulation Authority?
2.	In your view, does the size of the firm necessitate a greater level of cover?
3.	What are the most likely indicators of the level of cover required? E.g. gross fee income, turnover, number of principals, highest fee in previous period (and should the calculation be over the last year or longer?)
4.	Is the 50 principal rule still appropriate (e.g. given members of an LLP do not have personal liability, unlike unincorporated partnerships)? Does the number of principals impact the risk level, or the likely real world ability of the firm to meet liabilities?
5.	If principals is retained as part of the qualifying requirement for cover, how should it be defined in the modern world? E.g. should it encompass those held out as a principal or shadow directors, as well as statutory directors of corporate firms? For LLPs, should it extend to all members, or only those who have roles equivalent to statutory directors of corporates?
6.	Is the “compound firm” rule workable? E.g. should a firm that is part of a broader group be permitted to aggregate its size based on number of principals (if that rule remains), without some other measure in place, e.g. a commitment to ICAEW provided by the broader group to meet liabilities?

	STRUCTURE OF COVER
7.	What type of cover is needed? Should it be on an “any one claim” basis or an aggregate basis? Should it be permitted to have defence costs included in the limits of indemnity and be subject to the excess?
8.	How frequently are captives used (e.g. is it only large firms using captives?) and do you see the use increasing, and if so why?
9.	Where firms use captives, to what extent should that reduce or eliminate a firm’s requirement to comply with the minimum terms?
10.	Where firms buy very large commercial insurance programmes, which offer protection well in excess of the minimum level of cover, but otherwise with a scope of cover that is not fully compliant, to what extent should they be entitled to reduce or eliminate their requirement to comply with the minimum terms?

11.	Should there be additional monitoring or checks where captives or very large insurance programmes are used (e.g. guidance or a requirement to demonstrate capital adequacy?) How easily could such monitoring or checks be fulfilled by the ICAEW?
12.	Would a “top and drop” policy be available/practical in some or all of the situations where firms, for their own commercial reasons, consider that it would be an unnecessary cost of regulation to buy a fully compliant ICAEW policy?

NATURE OF BUSINESS	
13.	What do you consider to be high risk areas of work?
14.	Do certain areas of work necessitate a greater level of cover? Who should determine this?
15.	Where dispensations are sought, should firms ever be permitted to conduct ongoing work to which the insurance will not apply, or should exclusions from cover only be permitted for historic work?
16.	Is it realistic to impose requirements such as an escrow to hold monies on account of liabilities where the insurance is restricted? Is anything short of an escrow account (e.g. money in the firm’s own bank account) adequate?

RUN-OFF COVER	
17.	Do you consider that ICAEW’s run-off requirements provide sufficient protection to the public?
18.	Would any changes to the run-off requirements have a detrimental impact on the availability of insurance in the accountancy market?
19.	Are you aware of any difficulties in obtaining run-off cover for accountancy firms in the current PII market?