



# *Professional Indemnity Insurance (PII) Regulations*

EFFECTIVE FROM 1 JANUARY 2021

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# PROFESSIONAL INDEMNITY INSURANCE REGULATIONS AND GUIDANCE

Effective from 1 January 2021.

A table is available listing all the amendments that have been made to the Professional Indemnity Insurance (PII) Regulations since they were originally issued in 1998.

## INTRODUCTION

Guidance is included with the regulations, and additional guidance is in section 6. The regulations are in **bold** type to distinguish them from the guidance. Where defined terms are used in the regulations they are in **bold italics**. The guidance is shown in plain type throughout. Within the limits of regulations which have a legal standing, the wording is in plain English.

### Members and others who need to comply with the regulations

PII is compulsory for all members of ICAEW who have a practising certificate and are engaged in public practice, regardless of the amount of practice income.

The ICAEW statement on engaging in public practice is at [icaew.com/regulations](http://icaew.com/regulations). This sets out a definition of public practice. If a member remains in doubt as to whether their activities amount to engaging in public practice, they should contact Advisory Services on +44 (0)1908 248 250 and give all the facts of their circumstances.

Similarly, the regulations for audit, local audit, investment business, probate, licensed practices and insolvency require those so regulated to meet the requirements of the PII Regulations.

### Responsibility of members

The PII Regulations apply to individual members but, in practical terms, professional indemnity insurance usually covers their practising entity – for example their partnership or their sole practice. For those members in practice with non-members these PII Regulations effectively apply to the entire mixed practice. For example, in a mixed partnership, the principle of joint and several liability will make the member partner jointly liable for the actions of their non-member partners. Therefore the insurance should cover the whole practice, not just the member partner.

Members who are responsible for making their own or their firm's professional indemnity insurance arrangements should be sure that those arrangements comply with the PII Regulations. Many members are in firms and the professional indemnity insurance arrangements are handled by someone else on their behalf. This does not affect the responsibility of individual members to ensure they meet the PII Regulations.

### Level of insurance cover

Section 3 details the requirements for the minimum level of cover you must obtain. When deciding on how to achieve that level of cover you should consider the following:

- professional indemnity insurance – your broker will be able to help you to obtain cover; and
- the amount of excess to be borne by the insured – this level should only be decided after consideration of both the firm's and the principals' resources, including the borrowing capacity of each. Consider the past incidence of claims and your ability to meet multiple losses.

This is only the minimum amount of cover and you should always consider if this is adequate for your firm.

### Inability to obtain insurance

If you cannot obtain cover which satisfies the PII Regulations you may be able to enter the assigned risks pool for a period of time until cover is obtained in the market. Section 4 provides details.

### Who can provide insurance

You must obtain the minimum level of cover, subject to any allowable excess, from a participating insurer and appendix A explains who these are.

## **Annual return**

Each year ICAEW requires confirmation of compliance with the PII Regulations. All those covered by these regulations are asked to provide details of their insurance arrangements as part of the Practice Assurance annual return. ICAEW may check with brokers or insurers that the information is correct.

For many members the confirmation will be sent to their firm, and will cover all the members who are principals in the firm.

## **Further advice**

It is possible that the minimum level of cover, while complying with the PII Regulations, will not be high enough to ensure that all claims made against you will be covered. You should consider carefully the level of cover which is right for you or your firm. To assist you in this, section 6 includes answers to the queries which are most often raised by members and some general guidance notes.

Your broker will be able to help you if you have any further queries. If you would like to talk to someone at ICAEW please telephone:

- Advisory Services +44 (0)1908 248 250
- Assigned risk pool manager +44 (0)1603 207 030\*

\*Members should refer to section 4 before contacting the assigned risk pool manager.

## **Non-practising members**

Some members hold a practising certificate even though they are not engaged in public practice. There is no requirement for these members to have professional indemnity insurance. Such members are required to confirm annually that they are still not practising. If any practice activity is contemplated, then such members should obtain professional indemnity insurance, in accordance with these regulations, before the work commences. The Members' Registrar should also be informed that practice has commenced, together with the name of the firm that the member intends to practise under. The special situation of employees who hold practising certificates under the Audit Regulations and Guidance or the Insolvency Licensing Regulations is dealt with at regulation 5.3.

# 1 GENERAL

## Authority and commencement

- 1.1. These *regulations* were originally issued by the authority of the *ICAEW* Council on 1 November 1998.
- 1.2. The *regulations* were last amended on 1 January 2021 by the *ICAEW* Regulatory Board in accordance with clause 16 of the Supplemental Charter of 1948 and Principal Bye-law 49. They shall apply to all applications made to the PII Committee in accordance with PII Regulation 5.3 on or after 1 January 2021.

## Interpretation

- 1.3. Words and expressions have the meaning given by the Interpretation Act 1978 unless defined in these *regulations*. The definitions in these *regulations* take precedence.
- 1.4. In these *regulations* words importing the singular number include the plural number and vice versa. Words importing the neuter gender include both the masculine and feminine. Headings do not affect the interpretation of these *regulations*. The *regulations* will be governed by, and interpreted according to, English law.
- 1.5. Any reference to legislation, *bye-laws*, regulations, schemes or other documents will apply to any re-enactment, re-issue or amendment.

## Notice

- 1.6 A notice or other document to be served under these *regulations* may be delivered by hand, email or by first class post as follows:
  - a) if delivered by hand, service will take effect immediately;
  - b) if sent by email, service will be deemed to take effect at 9am on the next *business day* following the date of transmission, provided the notice or other document is sent to the most recent email address given by the addressee; and
  - c) if sent by post, service will be deemed to take effect 2 *business days* after posting, provided the notice or other document is sent to the latest address given by the addressee.

If, in the case of service by email, the sender receives notice that the email has not been delivered, the sender must use their best endeavours to identify an alternative email address for the addressee, and must re-send such notice to that alternative email address.

- 1.7 Any notice or other document required to be given or sent to *ICAEW* shall be given or sent to *ICAEW* at the following address:

Professional Standards Department, PII section  
Metropolitan House  
321 Avebury Boulevard  
Milton Keynes MK9 2FZ

## Definition of terms

- 1.8. In these *regulations* the following words have the following meanings.

accredited probate firm	a sole practitioner, a partnership or a body corporate accredited to conduct probate work under <i>ICAEW's</i> Probate Regulations.
affected party	A person or <i>firm</i> who is affected by a decision of the <i>Committee</i> made in accordance with <i>regulation 5.3</i> .
assigned risks pool	The arrangements by which <i>firms</i> who are otherwise unable to obtain professional indemnity insurance may do so for a limited period and to which all <i>participating insurers</i> subscribe.
assigned risks pool manager	The broking firm which advises <i>ICAEW</i> and which manages the <i>assigned risks pool</i> .
authorised firm	A sole practitioner, a partnership or a body corporate authorised under <i>ICAEW's</i> Investment Business Regulations.
authorised insurer	<p>An insurer:</p> <p>authorised by the Prudential Regulation Authority or the Central Bank of Ireland to carry on general insurance business in the <i>United Kingdom</i> or the Republic of Ireland, respectively;</p> <p>authorised by a regulatory body equivalent to the Prudential Regulation Authority or the Central Bank of Ireland in an <i>EEA</i> member state (other than the Republic of Ireland and, where appropriate, the <i>United Kingdom</i>), which is entitled to carry on general insurance business in the <u><i>United Kingdom</i></u> or the Republic of Ireland; or</p> <p>in respect only of risks resulting from professional business carried out by <i>firms</i> in an <i>EEA</i> member state (other than the Republic of Ireland and, where appropriate, the <i>United Kingdom</i>), authorised by a regulatory body equivalent to the Prudential Regulation Authority or Central Bank of Ireland in an <i>EEA</i> member state (other than the Republic of Ireland and, where appropriate, the <i>United Kingdom</i>) to carry on general insurance business in that <i>EEA</i> member state, where such insurer is an affiliate or subsidiary of an authorised insurer in the <i>United Kingdom</i> or Republic of Ireland.</p>
business day	Monday to Friday, excluding public holidays in England.
bye-laws	The <i>bye-laws</i> of <i>ICAEW</i> .
Committee	The Professional Indemnity Insurance Committee of <i>ICAEW</i> .
EEA	European Economic Area
firm	<ol style="list-style-type: none"> <li>a. a <i>member</i> engaged in public practice as a sole practitioner or with others in a partnership or a body corporate;</li> <li>b. an <i>authorised firm</i>;</li> <li>c. a <i>licensed firm</i>;</li> <li>d. a <i>registered auditor</i>;</li> <li>e. a <i>local auditor</i>;</li> <li>f. an <i>insolvency practitioner</i>;</li> <li>g. an <i>insolvency affiliate</i>;</li> </ol>

- h. an *accredited probate firm*; or
- i. a *licensed practice*.

<b>gross fee income</b>	<p>All income in respect of work carried on by a <i>firm</i> engaged in public practice, including:</p> <ul style="list-style-type: none"> <li>a. income for personal appointments in respect of work covered by professional indemnity insurance;</li> <li>b. income from third parties as commissions or brokerage (whether or not offset against charges to a client) and;</li> <li>c. income received in respect of work sub-contracted to others.</li> </ul> <p>It does not include:</p> <ul style="list-style-type: none"> <li>a. the recovery of disbursements and expenses which do not form part of the chargeable fee for professional services rendered;</li> <li>b. value added tax.</li> </ul> <p>Guidance: Gross fee income must include the income in respect of work which the firm has subcontracted to others. This is unless the work is clearly shown as a disbursement in the invoice issued for the relevant work and the client knows that the firm is not taking professional responsibility for the work.</p>
<b>insolvency affiliate</b>	<b>An individual granted affiliate status under <i>ICAEW's</i> Insolvency Licensing Regulations.</b>
<b>insolvency practitioner</b>	<b>An individual licensed under <i>ICAEW's</i> Insolvency Licensing Regulations.</b>
<b>ICAEW</b>	<b>The Institute of Chartered Accountants in England and Wales.</b>
<b>Institutes</b>	<b><i>ICAEW</i>, the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland.</b>
<b>Investigation and Discipline Scheme</b>	<b>The scheme, or any predecessor or successor scheme, established under clause 1b(vii A) or clause 1b(viii A) of the Supplemental Royal Charter of 21 December 1948.</b>
<b>Joint Advisory Panel</b>	<b>The Joint Advisory Panel appointed under <i>regulation</i> 5.14.</b>
<b>licensed firm</b>	<b>a sole practitioner, a partnership or a body corporate licensed under <i>ICAEW's</i> Designated Professional Body arrangements.</b>
<b>licensed practice</b>	<b>A sole practitioner, a partnership or a body corporate licensed under <i>ICAEW's</i> Licensed Practice Handbook.</b>
<b>local auditor</b>	<b>A sole practitioner, a partnership or a body corporate registered under <i>ICAEW's</i> Local Audit Regulations.</b>
<b>member</b>	<b>A member of <i>ICAEW</i>.</b>
<b>minimum limit of indemnity</b>	<b>The amount of insurance required each year under these <i>regulations</i>.</b>
<b>participating insurer</b>	<b>An <i>authorised insurer</i> who has agreed to the terms and conditions described in appendix A of these <i>regulations</i>.</b>



<b>principal</b>	<b>A sole practitioner, partner, director or member (of a limited liability partnership) of a <i>firm</i>.</b>
<b>practising certificate</b>	<b>The certificate issued to a <i>member</i> by ICAEW authorising the member to engage in public practice.</b>
<b>qualifying insurance</b>	<p><b>Insurance which:</b></p> <ol style="list-style-type: none"> <li><b>a. is underwritten by <i>participating insurers</i> (see appendix A);</b></li> <li><b>b. includes retroactive cover for liabilities arising from work carried out in the previous six years, except for claims or potential claims known about at the time the insurance was first taken out; and</b></li> <li><b>c. is underwritten in terms of the minimum wording approved by ICAEW.</b></li> </ol> <p>Guidance: A policy which does not use the exact approved minimum wording must contain a difference in conditions endorsement in a form approved by ICAEW. The required cover may be provided by more than one insurance policy. Retroactive cover may be for a shorter period than six years if the member has only just started in practice. The guidance notes in section 6 explain this further.</p>
<b>registered auditor</b>	<b>A sole practitioner, a partnership or a body corporate registered under ICAEW's Audit Regulations.</b>
<b>regulations</b>	<b>These <i>regulations</i> as modified or amended.</b>
<b>Review Committee</b>	<b>The committee appointed by the Professional Standards Appointments Committee with responsibility for reviewing decisions made by the <i>Committee</i> in accordance with <i>regulation 5.3</i>.</b>
<b>secretariat</b>	<b>The people employed by ICAEW to carry out its functions.</b>
<b>United Kingdom</b>	<b>Includes the Channel Islands and the Isle of Man.</b>

## 2 SCOPE AND MONITORING

This section explains who needs to take out professional indemnity insurance and how this is monitored. If you are about to start practising you should contact ICAEW, which will be able to provide any further information you need.

### Scope

#### 2.1. These *regulations* apply to:

- a. a *member* holding a *practising certificate* and resident in the *United Kingdom* or the Republic of Ireland;**
- b. a *member*, wherever resident, in public practice in the *United Kingdom* or the Republic of Ireland;**
- c. an *authorised firm*;**
- d. a *licensed firm*;**
- e. a *registered auditor*;**
- f. a *local auditor*;**
- g. an *insolvency practitioner*;**

- h. **an *insolvency affiliate*;**
- i. **an *accredited probate firm*; and**
- j. **a *licensed practice*.**

The regulations governing post-qualification education and training require a member who has a practising certificate to meet the requirements of these PII Regulations. This is regardless of the form of practice (that is as a sole practitioner or as a principal in a partnership or a body corporate) or the amount of practice income. Similarly those regulated by the regulations for audit, local audit, investment business, probate, licensed practices or insolvency have to meet the requirements of the PII Regulations.

Members who hold a practising certificate, but who do not engage in public practice, do not need to have professional indemnity insurance.

A practising certificate is evidence of being in public practice but these PII Regulations only apply to those members who are also resident, or in practice, in the United Kingdom or the Republic of Ireland. Other members who hold a practising certificate but who are resident elsewhere do not need insurance that meets the requirements of these regulations. If a member is in practice in another country then some form of insurance is recommended, but it is not mandatory unless required under the laws of the relevant jurisdiction.

However, members or firms that are authorised or licensed under ICAEW's audit, local audit, investment business, probate, licensed practice or insolvency regulations must comply with the requirements of the PII Regulations, even if they are located outside the United Kingdom or the Republic of Ireland.

**2.2. These *regulations* also apply to a *member* for a period of two years after ceasing to hold a *practising certificate*.**

**2.3. Those *members* who do not make their own professional indemnity insurance arrangements should ensure that the arrangements of their *firm* comply with these *regulations*.**

All members with practising certificates should satisfy themselves that they or their firm have suitable arrangements in place to comply with these regulations.

**2.4. In deciding whether these *regulations* have been complied with the *Committee* will take into account any guidance issued from time-to-time, by or on behalf of the ICAEW Regulatory Board. In the event of any actual or apparent conflict between these *regulations* and such guidance, the wording of these *regulations* will apply.**

## **Monitoring**

**2.5. Every *firm* is required to complete a return to ICAEW each year confirming its compliance with these *regulations*.**

**2.6. The *Committee* can require such further information and evidence as it may reasonably need from *members, firms* and *participating insurers*.**

Firms are required to provide details of their insurance arrangements to ICAEW each year as part of the Practice Assurance online annual return. Individual principals in a firm will not be asked to complete a separate return unless they are also in another firm on their own account. Similarly members who hold a practising certificate but who are not engaged in public practice will not receive a return, but they will be required to declare annually that they are not engaged in public practice.

If you have any problems completing the return, or if you experience any delay in renewing your cover, you should contact the Annual Returns team immediately on +44 (0) 1908 546 372 to explain the reasons for the delay.

If you fail to complete the return, or to explain to ICAEW why you are unable to do so, the consequences may be serious. You may be in danger of losing your registered or local auditor status, investment business authorisation, probate accreditation and/or licensed insolvency practitioner or licensed practice status. Your eligibility to hold a practising certificate could also be in danger and you may also be liable to disciplinary action.

## Cessation of practice

- 2.7. A member who ceases to be engaged in public practice in the *United Kingdom* or the *Republic of Ireland* must use their best endeavours to ensure that they are covered by arrangements which satisfy these *regulations* for at least two years from the date they ceased in public practice.**
- 2.8. When a *firm* ceases, the *members* in practice in that *firm* at the date of cessation shall ensure that there is in place appropriate cover to meet the requirements of these *regulations* for at least 24 months following the cessation of the practice. Thereafter the former *members* in practice in that *firm* shall use their best endeavours to ensure that cover is in place to meet requirements of these *regulations* for a further four years.**

It is extremely important that you secure 'run-off' cover for your previous practice after you cease to practise. This is to cover you for claims for work done while in practice but arising after the practice ceased. Such cover is a requirement of these regulations and it is in your own interests, whether or not you think you might have a claim in future. If your practice has been taken over by someone else this cover may be effected by the new practice or by you.

If the firm has ceased, you should maintain this cover for at least two years and at the end of that period you should use your best endeavours to put in place compliant run-off cover for a further four years.

ICAEW also recommends that the terms and extent of any run-off cover be equivalent to that provided by the firm's previous qualifying insurance. At a minimum run-off cover will need to comply with the limits of cover required by regulations 3.2 - 3.5. However you should bear in mind that these limits may not be sufficient depending on your circumstances.

A member who keeps a practising certificate after ceasing in public practice is required by these regulations to have run-off cover in accordance with regulation 2.7.

There is further guidance in section 6 about what to do in the case of other practice changes.

## 3 TERMS OF COVER

This section explains ICAEW's scheme of insurance and the level of cover you should have in place. Professional indemnity insurance works on a claims made basis. This means that the insurance will provide cover for claims first made or circumstances arising and notified to the insurers during the term of the current policy. This is irrespective of when the work concerned was carried out. It is therefore important that insurance remains in force to provide protection against any claims which may arise in the future for work done in the past.

It is most important that you check carefully the wording of your policy. This is so you understand:

- exactly how the insurance works;
- what is covered;
- on what terms; and
- subject to what terms, conditions and exclusions.

Remember that the terms of any additional policies that you obtain for levels of cover over and above the minimum levels required by these regulations may not necessarily be the same as the terms of the qualifying insurance offered by participating insurers.

## Ability to meet claims

### 3.1. A firm must:

- a. take reasonable steps to meet claims arising from being in public practice; and
- b. arrange *qualifying insurance* which meets the limits in *regulations 3.2 to 3.5*.

As well as taking reasonable steps to meet any claims that do arise, a priority is to limit the risk of claims against you. The guidance in section 6 gives some examples of the matters you should consider. Regulation 2.1 details who is subject to these regulations.

### Qualifying insurance

Qualifying insurance is a special type of insurance for those in public practice or subject to the audit, local audit, probate, investment business, licensed practice and/or insolvency regulations. This insurance can only be obtained from certain insurers who are known as 'participating insurers' for the purpose of these regulations. Further details of these insurers are in appendix A.

All participating insurers have agreed to provide cover under terms which match those of ICAEW's approved minimum wording. Those members taking out cover with a participating insurer can be certain that their policy meets the minimum requirements. These terms may be amended by insurers in an individual policy to include extensions of cover beyond the requirement of the approved minimum wording.

As an extra safeguard, ICAEW has asked those participating insurers which use a slightly different wording to include a 'difference in conditions' endorsement in their wording. In the event of a dispute between a policy holder and his or her insurer, the endorsement will ensure that ICAEW's minimum wording overrides that of the insurer where the insurer's wording is less favourable.

A current policy will primarily provide cover for past acts, whether or not cover was in place at the time of the act. Sometimes insurers may put a 'retroactive date' on the policy, limiting the period of cover for past acts. The date must be at least six years before the date of the current policy, or when the practice started if sooner.

The current text of the minimum policy wording and the difference in conditions endorsement may be obtained from ICAEW at [icaew.com/pii](http://icaew.com/pii).

### Minimum limit of indemnity

#### 3.2. Except where *regulations 3.3, 3.4 or 3.5* apply, the *minimum limit of indemnity* must be **£1.5 million for any one claim and in total**.

This means that the insurance must be for at least £1.5 million for a single claim or a number of claims totalling £1.5 million. You may be able to obtain cover of £1.5 million for each and every claim, regardless of the number of claims made. You must take out cover up to the minimum limit of £1.5 million with a participating insurer. Above that limit, cover does not have to be with a participating insurer, nor does it need to comply with the minimum approved wording.

Firms that are authorised to conduct insurance distribution activities and probate work may need to obtain additional cover as set out in regulations 3.4 and 3.5.

#### 3.3. Subject to *regulations 3.4 and 3.5*, if the *gross fee income of a firm* is less than **£600,000**, the *minimum limit of indemnity* for any one claim and in total must be equal to two and a half times its *gross fee income*, with a minimum of **£100,000**.

Firms with a gross fee income of less than £600,000 are not required to hold cover at the level prescribed in regulation 3.2. Nevertheless, firms with a gross fee income of less than £600,000 should always consider if cover below £1.5 million is sufficient for their situation.

Firms that are authorised to conduct insurance distribution activities and probate may need to obtain additional cover as set out in regulations 3.4 and 3.5.

- 3.4. If a firm is a licensed firm or a firm authorised by the Financial Conduct Authority (or any relevant successor body) to conduct insurance distribution activities, the minimum limit of indemnity required for those activities must be equivalent to at least €1,250,000 for any one claim and €1,850,000 in total per annum. This may form part of, or be in addition to, the minimum limit of indemnity required for the firm's other activities under regulations 3.2 or 3.3.**

Firms:

- licensed by ICAEW under the Designated Professional Body arrangements; or
- authorised by the Financial Conduct Authority (or any relevant successor body).

must comply with the insurance requirements specified in the EU's Insurance Distribution Directive (IDD). The IDD only applies if firms undertake regulated activities relating to contracts of insurance covered by the Directive. The Designated Professional Body Handbook gives further information (see regulation 2.07m and note 3 at the end of Part 2 of the Handbook).

Such firms must hold a minimum level of PII as set out in regulation 3.4. This may exceed the amounts otherwise required by these regulations. For example, the minimum limit of indemnity required by regulation 3.3 is less than the amounts required by regulation 3.4 and would not be acceptable for a firm which conducts insurance distribution activities.

Some licensed firms will already have PII in excess of the IDD limits. They need take no further action. Other licensed firms may need to increase the sum insured. They can do this by increasing the total sum insured to the IDD limits for all the firm's activities.

Alternatively, it may be possible to get an extension of cover. The licensed firm may have, for example, £500,000 of PII. In this scenario, the firm can increase the sum insured to the IDD limits to cover only claims relating to the insurance distribution activities covered by the IDD.

Licensed firms should discuss with their broker or insurer the need for any changes to the sum insured. The amounts in regulation 3.4 are minimum levels and licensed firms should always consider whether the minimum amount is sufficient for the regulated activities it undertakes.

As licensed firms are unlikely to be able to obtain PII denominated in euros, they need only consider whether the sum insured is the equivalent in sterling to the IDD limits when they renew their cover. There's no need to anticipate future exchange rates and forecast the amount in sterling necessary to exceed the IDD limits throughout the period of the PII policy.

Licensed firms that start negotiations well before the policy renewal date should consider what the exchange rate may be by the renewal date. The exchange rate used in the calculation will be acceptable provided it was current during the one-month period before the renewal date.

Licensed firms should keep a record of their calculations and the source of the exchange rate used.

- 3.5 If a firm is an accredited probate firm, the minimum limit of indemnity required for authorised work (ie, probate and estate administration) is £500,000 for any one claim. This may form part of, or be in addition to, the minimum limit of indemnity required for the firm's other activities under regulations 3.2 or 3.3.**

Firms that are accredited to conduct probate work under ICAEW's Probate Regulations must hold, as a minimum, the level of PII set out in regulation 3.5. This may exceed the amounts required by these regulations in other circumstances. For example, the minimum limit of indemnity required by



regulation 3.2 may be an aggregate amount (ie, not per claim) and the amount required by regulation 3.3 may be less than £500,000 (and also not per claim).

Some accredited probate firms may already have professional indemnity insurance that exceeds the limits set out in regulation 3.5. If they do, and if this insurance is on an 'each and every claim' basis, this will suffice for the purposes of these regulations.

Other accredited probate firms may need to increase the sum insured. They may do this by increasing the total sum insured for all the firm's activities to meet the requirements of regulation 3.5.

If a firm has PII above £500,000, but this cover is in the aggregate, the policy will either need to be amended to increase cover to an 'each and every claim' basis, or, alternatively, it may be possible to get an extension of cover. The accredited probate firm may be insured, for example, for an aggregate amount in respect of its other (non-probate) activities. In this scenario, the firm can increase the sum insured to the limits in regulation 3.5 to cover only claims relating to authorised work (ie, probate and estate administration) as set out in ICAEW's Probate Regulations.

Accredited probate firms should discuss the need for any changes to the sum insured with their broker or insurer to ensure compliance with the requirements of these regulations.

The amounts in regulation 3.5 are minimum levels and accredited probate firms should always consider whether the minimum amount is sufficient for the activities they undertake.

### **3.6. Gross fee income should be based on the accounting year of the firm which immediately precedes the start of the policy.**

Gross fee income must include the income in respect of work which the firm has subcontracted to others. This is unless the work is clearly shown as a disbursement in the invoice issued for the relevant work and the client knows that the firm is not taking professional responsibility for the work.

The figure of gross fee income should be based on the most recently completed accounting year. If this is your first year in practice, you should give your broker an estimate of your gross fee income. However, if the most recently completed accounts are not for a year or are for a period ending some time previously to the policy renewal date then you may need to estimate the gross fee income figure to use. It is advisable not to decrease the amount of cover from that previously held until a completed set of accounts shows a decrease in gross fee income. This is because although the insurance is on a claims made basis, regardless of when the work was done, claims do arise from previous years and if turnover was greater in the past the possibility of claims may be higher.

### **3.7. The minimum limit of indemnity can include an aggregate excess provided that the aggregate excess is no more than £30,000 multiplied by the number of principals.**

Although there is a minimum amount of insurance needed, part of this can be borne as an excess as in any other form of insurance. However, regulation 3.7 sets a limit to the amount of the excess by reference to the number of principals in the firm.

An insurance policy will usually have a per claim excess (ie, the firm has to pay the first part of any claim) but, in conjunction with the approved minimum wording of a qualifying insurance policy, the excess amount is an aggregate amount. So, if a firm has paid out an excess on one or more claims, once the total amount of those excess payments have reached a limit of £30,000 multiplied by the number of principals, the firm does not have to pay any further amounts by way of an excess in that policy period.

If a firm has 50 or more principals, the minimum limit of indemnity is reduced to zero and such a firm is not obliged to obtain qualifying insurance, it can make its own insurance arrangements, but must

still comply with regulation 3.1a and all other regulations except for regulation 3.1b and this regulation 3.7.

The Committee has the power (see regulation 5.3) to vary the excess amounts in specific situations. However, the general rule is that the maximum should be £30,000 per principal.

If more than one firm is insured under a policy, the total number of principals in all the firms should be calculated for the purposes of determining the maximum level of permitted excess for the purposes of this regulation. The calculation should include only natural persons, not corporate principals, and if an individual is a principal of more than one firm within a group, they should be included in the calculation only once.

- 3.8. If the *Committee* is satisfied that a group (however composed) of *firms* has shown that together they comply with these *regulations*, it is at the *Committee's* discretion to allow that group to be treated as a single entity (compound firm) for the purposes of these *regulations*.**

The Committee can treat a 'group' of separate firms as a compound firm. Such a firm will usually comprise a number of associated firms which appoint one of their number to arrange insurance under one policy.

## 4 INABILITY TO OBTAIN COVER

It is possible, for example if you have had a number of claims, that you may not be able to obtain cover. This section explains the provisions which will help you and what you need to do if you are refused cover in the insurance market with a participating insurer. The assigned risks pool is effectively an insurer of last resort and was set up to ensure that members are almost always able to comply with these regulations, whatever their circumstances.

Every participating insurer has agreed to subscribe to the assigned risks pool. This can provide cover in an emergency and for up to two years, although premium levels are considerably higher than charged outside the assigned risks pool. The assigned risks pool manager (see introduction for telephone number) acts as coordinator between firms, participating insurers and ICAEW. If you wish to apply to enter the assigned risks pool you should telephone the assigned risks pool manager who will be able to help you and will provide the documents you need.

If you establish to the satisfaction of the Joint Advisory Panel (regulation 5.14) that you cannot obtain the professional indemnity insurance cover required by these regulations then you are eligible for admission to the assigned risks pool.

### Reasons for entering the Assigned Risks Pool

- 4.1. The *Joint Advisory Panel* will permit an applicant to be insured in the *assigned risks pool* if:**
- a. the applicant has evidence of declinature from *participating insurers* in a form satisfactory to the *Joint Advisory Panel*;**
  - b. the applicant is unable to obtain a quotation from any *participating insurer* other than a quotation which (in the opinion of the *Joint Advisory Panel*) amounts to constructive declinature. Prima facie evidence of constructive declinature will be:**
    - 1. the quotation of a premium which the applicant is unable to pay within six months from the commencement of the policy; or**
    - 2. the quotation of a premium which has such an effect on the applicant's financial security that it jeopardises its ability to carry on its business; or**

- c. **cover following cessation of public practice (see *regulations 2.7 and 2.8*) is not available from any *participating insurer*.**

You may apply for entry into the assigned risks pool if you or your firm cannot obtain cover to comply with these regulations from any participating insurer. Declinature and constructive declinature are insurance terms. Declinature means that you have been refused cover. Constructive declinature means that you have been offered cover but only at a premium which you cannot pay or which, if you did pay it, would put your practice at risk financially. If you wish to plead constructive declinature you must satisfy the Joint Advisory Panel, producing such evidence as the Panel requires that the premium quoted meets one or more of the conditions of regulation 4.1b.

#### **Procedure for entering the assigned risks pool**

#### **4.2. Application for admission into the *assigned risks pool* must be made to the *assigned risks pool manager*. Any application must include:**

- a. **evidence of declinature satisfactory to the *Joint Advisory Panel*, or**
- b. **a declaration by the applicant of the circumstances it considers to be evidence of constructive declinature. The *assigned risks pool manager* will refer the matter to the *Joint Advisory Panel*, which will decide whether particular cases constitute constructive declinature and whether the *firm* can enter the *assigned risks pool*.**

#### **4.3. An applicant will be given a short term admission to the *assigned risks pool* provided the applicant has signed the contract for entry, while other *participating insurers* are approached or while the *Joint Advisory Panel* decides whether there has been constructive declinature.**

The Joint Advisory Panel has delegated the authority to approve evidence of declinature to the assigned risks pool manager.

It is possible to enter the assigned risks pool on a short term basis if your current insurers have declined to provide renewal terms and have not agreed to an extension of cover. Temporary cover for up to thirty days may be granted in the assigned risks pool and should provide sufficient time for participating insurers to be approached.

The assigned risks pool manager will explain that anyone attempting to gain entry to the assigned risks pool must approach other participating insurers to seek insurance. For details of participating insurers and how they should be approached you should refer to the assigned risks pool manager.

#### **4.4. Before admission to the *assigned risks pool* the applicant must:**

- a. **supply the *assigned risks pool manager* with any information it may reasonably require;**
- b. **pay to the *assigned risks pool manager* any required deposit and agree to pay the balance of any further premium, as eventually assessed, in accordance with the timescales set out in the contract for entry;**
- c. **agree to submit, at the applicant's own expense, to investigations as required by *regulation 4.5*; and**
- d. **consent to the *assigned risks pool manager* notifying the *Committee* of the application for admission to the *assigned risks pool* and whether or not it was granted.**

The cover provided in the assigned risks pool will not include claims made or circumstances reported or known to you before you entered the assigned risks pool. Before entry into the assigned



risks pool it is therefore essential to notify existing insurers, before the existing policy expires, of all known claims or circumstances which might give rise to a claim.

- 4.5. Once in the *assigned risks pool* the person, *member* or *firm* must submit, at its own expense, to an investigation by the *Committee* or its appointed agent and, if the *Committee* so decides, to a further investigation at a later date. A deposit for the costs of the investigation may be required at the *Committee*'s discretion. The investigation will:**
- a. determine the reasons why cover could not be obtained; and**
  - b. ascertain what steps, if any, should be taken to enable cover to be obtained outside the *assigned risks pool*.**
- 4.6. The *Committee* will notify the person, *member* or *firm* of any action it should take following the investigation. If, as part of the investigation, the *Committee* considers that the interests of any clients of the person, *member* or *firm*, or of the public, may be adversely affected, the *Committee* will refer the matter to any regulatory, disciplinary or other committee of *ICAEW* for that committee to take appropriate action.**

Before you can enter the assigned risks pool you must sign a contract which requires you to pay the premium determined by the Joint Advisory Panel and have a review of your practice. A significant premium deposit is payable immediately. A final adjustment will be made once your position has been reviewed. You must also pay the cost of the investigation and any follow-up investigation which is necessary.

ICAEW will arrange for an investigation of your firm. This report will be used in deciding whether you are in a position to be able to leave the assigned risks pool and, if not, what steps should be taken by you to satisfy insurers. It is also to enable the committee to assess whether it should report any matters for possible regulatory or disciplinary action.

#### **Leaving the assigned risks pool**

- 4.7. The written approval of the *Joint Advisory Panel* is required before a person, *member* or *firm* can remain in the *assigned risks pool* for more than twenty four consecutive months.**
- 4.8. Applications for extensions of time in the *assigned risks pool* must be made, through the *assigned risks pool manager*, to the *Joint Advisory Panel* which has absolute discretion to grant the application for continuation in the *assigned risks pool*. The decision of the *Joint Advisory Panel* in respect of the continuation will be final. Any such extension may be granted subject to the requirements of *regulation 4.4*.**
- 4.9. The written approval of the *Joint Advisory Panel* for a person, *member* or *firm* to remain in the *assigned risks pool* must be submitted to the *Committee*. If the *Committee* considers that the interests of any clients of the person, *member* or *firm*, or of the public, may be adversely affected by the person, *member* or *firm* remaining in the *assigned risks pool*, the *Committee* will refer the matter to any regulatory, disciplinary or other committee of *ICAEW* for that committee to take appropriate action.**

You can leave the assigned risks pool at any time if you obtain cover in the general insurance market. You must normally leave the assigned risks pool after two years and, if it is not possible to obtain cover at the end of those two years, you will no longer be eligible to hold a practising certificate. It may be possible to obtain an extension of time within the assigned risks pool but this is at the discretion of the Joint Advisory Panel.

It is essential to advise the assigned risks pool manager of any claim or circumstance which might give rise to a claim before you leave the assigned risks pool. It is also essential, when seeking cover outside the assigned risks pool, to make any potential insurer aware of your time in the assigned risks pool, otherwise this could jeopardise your cover.

## 5 THE COMMITTEES

### Professional Indemnity Insurance Committee

#### Composition

5.1. The *Committee* consists of at least four members and its quorum is three.

#### Responsibilities

5.2. The *Committee* is responsible for:

- a. reviewing the *qualifying insurance* criteria;
- b. monitoring compliance with these *regulations* and reporting non-compliance to any regulatory, disciplinary or other committee of *ICAEW*;
- c. deciding the content of the annual return to monitor compliance with these *regulations* (*regulation 2.5*);
- d. approving the form and content of the contract for entry into the *assigned risks pool*;
- e. ensuring the commissioning of investigations into *firms* applying to be admitted to the *assigned risks pool* (*regulation 4.5*);
- f. making a referral to any regulatory, disciplinary or other committee of *ICAEW* for that committee to take appropriate action following an investigation under *regulation 4.5*;
- g. designating *authorised insurers* as *participating insurers*; and
- h. granting, at its absolute discretion, an exemption under *regulation 5.3*.

#### Dispensations

5.3. The *Committee* may, at its absolute discretion, and in such terms as it decides:

- a. grant an exemption from the requirements of these *regulations* to a *member* who is a *principal* in a practice which is regulated by another professional body and has in place the professional indemnity insurance required by that body;
- b. waive or relax the requirements of *regulation 3.7* (level of excess);
- c. allow a *firm* subject to these *regulations* to combine with others to comply with these *regulations*;
- d. waive or relax the requirement of these *regulations* to hold *qualifying insurance*;
- e. grant an exemption from the requirements of these *regulations* to a *member* who is an employee in a *firm* and who is holding a *practising certificate* only to meet the requirement of the audit or insolvency regulations and who is not engaged in public practice in another *firm* or on their own account;
- f. grant an exemption from the requirements of these *regulations* to a *member* who holds a *practising certificate* but who is not engaged in public practice;
- g. grant an exemption from the requirements of *regulation 3.1b* (arranging *qualifying insurance*) to an entity or individual if that entity is owned or the individual is employed by an entity that is not subject to these *regulations*

**provided that other entity (the owner/employer) has, and agrees to maintain, other appropriate professional indemnity insurance; and**

- h. grant an exemption from the requirements of *regulation 3.1b* (arranging *qualifying insurance*) to an entity or individual if that entity or individual is resident in a country outside the UK or RoI provided that the entity or individual is primarily in practice outside the UK/RoI and has other appropriate professional indemnity insurance that covers work undertaken in the UK/RoI.**

This regulation allows the committee to exempt members and firms from the requirements of particular regulations. These are the only exemptions allowed.

You may be in a firm which is regulated and insured under the requirements of another professional body. ICAEW can advise you if your cover meets the requirements of these regulations and whether you may apply to the committee for an exemption from them.

The minimum requirements may include a self insured element so long as it does not exceed the limits in these regulations. The limits are set out in full in regulation 3.7. The committee can vary these in specific situations although the general rule is that the self insured element should be no more than £30,000 per principal in the aggregate.

The committee can permit a group of firms to arrange the insurance required by these regulations jointly. Regulation 3.8 details how this can happen.

In exceptional cases the committee can relax the requirement to hold qualifying insurance (ie, insurance with a participating insurer, which complies with the approved minimum wording and provides 6 years' retroactive cover).

The Audit Regulations and Guidance allow an employee to be designated as a responsible individual and the Insolvency Regulations allow an employee to hold an insolvency licence. Both sets of regulations require such an employee to hold a practising certificate. However, there is no need for such an employee to have his or her own professional indemnity insurance.

Some members hold a practising certificate even though not engaged in public practice. There is no need for such members to have their own professional indemnity insurance.

If the individual is also engaged in public practice in another firm or otherwise on his or her own account, insurance must be obtained to meet the requirements of these regulations.

You may be subject to these regulations but employed or owned by another entity which is not. In this case the committee may exempt you from having 'qualifying insurance' but only if the other entity has other appropriate professional indemnity insurance arrangements in place.

You may also be subject to these regulations but your practice is primarily based outside the UK or RoI. In this case the committee may exempt you from having 'qualifying insurance' but only if you have other appropriate professional indemnity insurance arrangements in place for your UK/RoI clients.

In all cases, any relaxation of the regulations is at the absolute discretion of the committee which may attach conditions to the grant of the dispensation. Guidance on the criteria that the Committee will use in considering whether to grant a dispensation from the requirements of the regulations is set out in appendix B.

- 5.4 A decision under *regulation 5.3* will come into effect as soon as notice of it is served on the applicant individual or *firm*, or such later time as the *Committee* specifies, save that if the individual or *firm* has applied for a review of the decision in accordance with *regulation 5.5*, the effect of the *Committee's* decision will be suspended pending a decision on the review. Alternatively, the *Committee's* decision will stand if the request for a review is withdrawn and become effective on the date on which notice of such withdrawal is served.**

## Review

- 5.5 **An *affected party* may apply for a review of the *Committee's* decision to refuse to grant a dispensation, or to grant a dispensation subject to conditions, in accordance with *regulation 5.3*.**
- 5.6 **An application for review must be made in writing to *ICAEW* within 10 *business days* of service on the *affected party* of the decision made under *regulation 5.3*.**
- 5.7 **A meeting of the *Review Committee* will be arranged as soon as practicable after an *affected party* has applied for a review of the decision. The *Review Committee* will consider the matter and will hear any new evidence and/or receive any new documentation put forward by the *affected party* in support of the application. The *Review Committee* may make any decision which the *Committee* could have made in accordance with *regulation 5.3*.**

If a person or firm is dissatisfied with a decision of the Committee to either refuse to grant a dispensation, or to grant a dispensation subject to conditions, they may apply for a review of the decision by ICAEW's Review Committee. An application for review must be submitted in writing to ICAEW within 10 business days of the Committee's decision being served (for the deemed timing of service see regulation 1.6). The Review Committee will consider the matter and will have the same powers as the Committee to determine the application in accordance with regulation 5.3. It may make the same or a different decision.

- 5.8 **The *Review Committee* may, in its absolute discretion, order an *affected party* to pay some or all of the costs of the review.**

## Other powers

- 5.9 **The *Committee* may publish its decisions or advice as and where it considers appropriate.**
- 5.10. **The *Committee* may delegate its duties to sub-committees or to the *secretariat*.**

## Provision of information to the Committee

- 5.11. **In carrying out its functions under these *regulations* , the *Committee* has the power to require a person, *member* or *firm* subject to these *regulations* to provide any information (including books, papers and records) about it or its clients. This power can also be exercised by any of the *Committee's* sub-committees, the *secretariat*, or any duly appointed agent.**
- 5.12. **Information provided to the *Committee* under these *regulations* will be treated as confidential but may be disclosed if the *Committee* considers it appropriate in the following circumstances:**
- a. **in connection with the procedures set out in these *regulations*;**
  - b. **in connection with disciplinary proceedings by *ICAEW* or the *Investigation and Discipline Scheme*;**
  - c. **in connection with the discharge by *ICAEW* of its function as a regulatory body; or**
  - d. **as required by law or regulations.**
- 5.13. **A person, *member* or *firm* which was subject to these *regulations* will nevertheless continue to be subject to *regulation 5.11* in so far as the enquiries or information**

**required relate to any period up to and including the date when compliance with these *regulations* was no longer required.**

It is important that confidentiality is maintained so as to avoid prejudicing the terms of members' insurance cover. Except for the circumstances described in regulation 5.12 neither the committee, nor any member of ICAEW or secretariat, may disclose the insurance details of any member to any person other than that member.

### **Joint Advisory Panel**

#### **5.14. The *Joint Advisory Panel* will:**

- a. consist of two representatives from each of the *Institutes*, one of whom shall be nominated Chair by joint agreement of the Presidents of the *Institutes*, and four representatives from the *participating insurers*;**
- b. have a quorum for meetings of four members, two of whom must be representatives of the *Institutes* and two of the *participating insurers*; and**
- c. meet as required and at least twice a year.**

#### **5.15. The *participating insurers*' membership of the *Joint Advisory Panel* will be reviewed every 3 years by the *assigned risks pool manager* for recommendation to the *Institutes* based primarily on the *participating insurers*' level of participation in the *assigned risks pool* and such other criteria as may be determined by the *Institutes* from time to time.**

#### **5.16. The *Joint Advisory Panel* is responsible for:**

- a. reviewing the progress, effectiveness and viability of the *participating insurers* scheme including the *assigned risks pool*;**
- b. reviewing insurance matters referred to ICAEW ;**
- c. determining applications for admission to the *assigned risks pool*;**
- d. determining applications for extensions in particular cases to the maximum of twenty four months in the *assigned risks pool*; and**
- e. dealing with any other matters referred to the *Joint Advisory Panel*.**

The Joint Advisory Panel ensures that there is a regular exchange of information between the Institutes and insurers and that the regulations are suitable to meet current market conditions. The Joint Advisory Panel also provides technical expertise and, in particular, monitors firms in the assigned risks pool. While the Joint Advisory Panel comprises 4 insurer representatives on a standing basis, up to 2 additional insurer representatives may attend meetings from time to time in an advisory (and non-voting) capacity.

## **6 ADDITIONAL GUIDANCE**

- 6.1. This section has been compiled from questions asked by members and should answer most of your queries. If you are unable to find the answer to your particular problem, you should contact your broker, or the professional indemnity insurance section of Professional Standards.**
- 6.2. This section, together with the guidance included with the regulations, also provides guidance on the 'reasonable steps' that regulation 3.1 requires firms to take.**

### **Monitoring compliance**



- 6.3. Members and firms are required to confirm annually to ICAEW their compliance with the regulations as part of the Practice Assurance annual return.
- 6.4. Individual principals in a firm will not receive separate returns unless they are also in another firm on their own account. Members who hold a practising certificate but who are not engaged in public practice will not receive a return.

### **Claims handling**

- 6.5. All principals, together with their employees, should be made aware of the importance of notifying insurers promptly of claims or circumstances which may give rise to a claim. Everyone in the firm should know that failure to comply with underwriters' requirements in this regard could seriously prejudice the firm's rights and entitlement to indemnity under the policy.
- 6.6. One person, at the level of principal, should be given the task of recording and coordinating information about claims or circumstances and of notifying brokers/underwriters accordingly. That person should regard the prompt notification to brokers/underwriters as a first priority and should not wait until there have been developments or until a detailed report of the matter has been prepared.
- 6.7. All staff should be encouraged to report promptly to the individual designated in the above paragraph any matters of which they become aware.
- 6.8. Claims or circumstances should be regarded objectively. If there are circumstances which might reasonably give rise to a claim then insurers should be notified immediately. This is regardless of the fact that currently allegations may be vague or not specified and regardless of whether the member personally thinks liability is unlikely. (In this latter regard the question of liability is a legal one which only lawyers and, ultimately, the courts are competent to decide.)
- 6.9. There should be a regular item on the agenda of principals' meetings to discuss any matter that might lead to a claim and also to monitor any claims that have been made.
- 6.10. Prior to renewal and the completion of the proposal form, a circular should be sent to all principals requiring confirmation that they are not aware (after enquiry of staff who report to them if applicable) of any claim or circumstance which may give rise to a claim. The circular should remind principals and staff of the importance of the declaration and that failure could prejudice the firm's rights under the policy. In addition, it should make clear that the period between the completion of the proposal form and renewal is a critical one and that any matter or circumstance arising in that period must be notified as a matter of great urgency.

### **Cost of cover**

- 6.11. This is a matter between you and your insurer and ICAEW will not become involved in these discussions unless you are offered a quotation which you are unable to pay within six months from the commencement of the policy, or which has such an effect on your financial security that it jeopardises your ability to carry on your business (regulation 4.1).

### **Level of cover**

- 6.12. Having carried out your risk assessment procedures (see paragraphs 6.15 to 6.22) you should decide the level of cover required, considering:
- the minimum level required by these regulations;
  - the likely level of exposure of the firm to claims;
  - whether current cover is consistent with that of similar firms, using available resources such as interfirm comparison, information held by your broker, and information held jointly with other firms in a mutual arrangement;
  - the advice from experts on what cover is available and its cost. This should include consideration of whether the cover offered includes legal costs within, rather than in addition to, the limit of indemnity. Your broker will be able to assist you;
  - the level of the firm's own resources to meet claims. This includes the availability of both firm and personal assets and reserves held to meet known claims.

### **Practice mergers etc**

- 6.13. You must plan in advance if your firm's structure changes. For example, if you are about to merge with another firm, you and your fellow principals must ensure that the new firm has sufficient qualifying insurance in order for you to comply with the regulations. If your firm is dividing, each new firm must have sufficient qualifying insurance in its own right. Further guidance is in paragraph 6.23 onwards.

### **Recommended level of insurance cover (limit of indemnity)**

- 6.14. The minimum required level is set out in section 3. No firm is currently required to have more than £1.5 million insurance cover (per claim and in the aggregate), but for many firms this limit may not be adequate. It is important to note that all firms are required to take reasonable steps to be able to meet claims arising from professional business.

### **Risk assessment**

- 6.15. Your first priority is to limit the risk of claims against your firm.
- 6.16. ICAEW produces a helpsheet [Managing Professional Liability Risk](#), which sets out in detail the steps you should take to limit the risk of claims and what you should consider before accepting new clients, or new work from existing clients.
- 6.17. A firm should carry out a risk assessment and take any appropriate action. This would normally be at least annually, in the context of an impending renewal of PII cover, and at any other time when the composition of the firm or its client base changes significantly. The assessment should give consideration to the possibility of being sued should anything go wrong and the possible amount of such a claim:
- client by client, having regard to whether the work is ongoing or one-off;
  - client by client, having regard to the maximum potential exposure of those interested in the client, for example shareholders and creditors.
- 6.18. External information such as the general economic climate and the types of business experiencing difficulties should also be considered as part of the assessment.
- 6.19. As part of the assessment of each client (and new clients before they are taken on) the following should be considered:
- instructions received, and nature of work to be carried out and the resources necessary in time and staff to complete tasks in a timely and accurate manner;
  - credibility of management;



- quality of accounting, financial and management controls;
  - type of business;
  - continued viability of company;
  - the effect of the fee on the quality of the work.
- 6.20. If you decide that work done for any client creates a potentially higher than average risk, whether or not you are charging a fee, you should:
- evaluate your ability to mitigate the risk in terms of procedures;
  - initiate safety procedures, for example a review by another principal;
  - reconsider your quality control and assurance procedures;
  - decide whether to retain the client.
- 6.21. Remember the need to cover:
- all of your firm's current staff, including sub-contractors and consultants;
  - all of your firm's activities including, for example, joint audit appointments;
  - past and new principals and predecessors in business.
- 6.22. After taking any limiting action you must then assess the remaining risk before deciding upon the level of professional indemnity insurance. Bear in mind the firm's claims history and the need for regular analysis of prime causes of any failures experienced by the firm.

### **Retroactive cover**

- 6.23. When a practitioner ceases in public practice then 'run-off' cover should be arranged. This is explained below.
- 6.24. The position can be more complicated when a practitioner moves between practices. The obligation is on individual members to have 'qualifying insurance'. An important part of what constitutes qualifying insurance is retroactive cover. Although the insurance is on a claims made basis, which means the relevant time is when a claim is made, not when the work was done, insurers will frequently put a retroactive date on the policy. This cannot be less than six years and may well be much longer. The practical effect is that the insurers will not accept a claim if the original work was done before the retroactive period started.
- 6.25. When a practitioner changes practice, either by moving between firms or leaving a partnership to become a sole practitioner, it is very important that this retroactive part of the cover is maintained. This can be achieved in a number of ways:
- as retroactive cover in the new practice;
  - as a former principal in the old practice;
  - as a special policy;
  - as a last resort, in the assigned risks pool (see section 4).
- 6.26. It is the member's responsibility to ensure that this element of the cover is in place. If the cover is provided by the insurance policy of a practice the member has just left, then the provision of such insurance, and confirmation of its continued existence, should form part of any 'leaving' agreement.

- 6.27. Similar consideration applies when practices merge or break-up into smaller firms. Each member should ensure, through one route or another, that retroactive cover is in place. It may be necessary to take advice from a specialist insurance broker. As with all such matters, advance planning is essential.

### **Run-off cover**

- 6.28. Members are required to use their best endeavours to ensure they are covered by arrangements which comply with ICAEW's regulations for at least 24 months after they cease to practise. Run-off cover may be provided under the policy of a continuing practice or you may need to take out an individual policy. If your former practice has undertaken to include run-off cover for you in its current cover, you must remember to check that it continues to cover you for at least two years. At the end of that time you should consider whether you need continued cover. It is recommended that you consider maintaining run-off cover for six years after you cease to practise.
- 6.29. Where firms cease, the members in practice in the firm must ensure that compliant cover is in place for at least 2 years, and thereafter they must use their best endeavours to maintain compliant run-off cover for a further 4 years.
- 6.30. It is recommended that the terms and extent of any cover be equivalent to any previous qualifying insurance. It is to cover the practitioner for claims received after ceasing in practice for work done while in practice.

### **Terms used in policy documents**

#### **Aggregate**

- 6.31. The total limit of indemnity available. The policy may describe this as 'any one claim and in all' or 'each and every claim and in the aggregate'.

#### **Claims made basis**

- 6.32. This means that the insurance will provide cover for claims first made or circumstances arising and notified to the insurers during the term of the current policy only. This is irrespective of when the work concerned was carried out, but see 'retroactive cover' above. It is therefore important that insurance remains in force to provide protection against any claims which may arise in the future for work done in the past.

#### **'Each and every' claim or 'any one' claim**

- 6.33. The limit of indemnity specified in the policy schedule which is available to meet 'each and every' claim. This may also be written as 'any one claim'. In this case there is no overall limit to the number of claims and multiple claims, each up to the limit, could be made.

#### **Limit of indemnity**

- 6.34. The maximum amount that an insurer is obliged to pay out, either in aggregate or each and every claim, to meet valid claims against the firm while the insurance is in force.

## APPENDIX A – PARTICIPATING INSURERS

Any authorised insurer prepared to agree to the conditions of ICAEW's scheme may apply to the assigned risk pool manager to be designated as a participating insurer.

To be a participating insurer, an authorised insurer has to agree to:

- provide insurance in accordance with these regulations;
- subscribe to the assigned risks pool, as described in section 4;
- supply ICAEW or its appointed agent such information as it may reasonably require;
- refer to arbitration all disputes with insured firms involving disagreement about:
  - which of two or more participating insurers should indemnify a firm; or
  - how two or more participating insurers should indemnify a firm.

ICAEW has a list of participating insurers which is updated every year and can be obtained from the ICAEW website at [icaew.com/pii](http://icaew.com/pii).

Most insurers underwrite in groups (facilities) with a lead underwriter and several following underwriters. On the list provided by ICAEW, those insurers which accept business direct are indicated. The other insurers must be approached through a broker, preferably a Lloyd's broker, with access to all participating insurers.

## APPENDIX B – GUIDANCE ON THE EXERCISE OF DISPENSATION POWERS (REGULATION 5.3)

In accordance with regulation 5.3, the Committee has an absolute discretion in deciding whether to grant an application for dispensation, or to grant an application subject to conditions. The decision on whether to grant a dispensation will be based on the specific circumstances of the applicant individual or firm. In considering the application, the Committee shall have regard primarily to the need to ensure that appropriate insurance arrangements are in place for the purposes of client protection.

The Committee should never waive the requirement to have insurance and should require that some degree of cover will be in place for all ongoing activities of the firm. Generally, the Committee should also require that cover be in place for activities carried out in the last 6 years. This is because PII is on a 'claims made' basis and the PII Regulations require firms to have qualifying insurance that provides a minimum of 6 years' retroactive cover.

### ***PII Regulation 5.3(d) – waive or relax the requirement to hold 'qualifying insurance'***

Where it has not been possible for the firm to obtain fully compliant cover for all activities, and the lack of availability of commercial cover has been verified by ICAEW's broker, the Committee may, if it considers appropriate, grant a dispensation for a policy that restricts or excludes cover completely for certain business activities ("the Activities").

The Committee should be more willing to grant a dispensation where there would be some form of reduced cover remaining in place for the Activities (e.g. where there would be a lower limit of indemnity for claims arising from the Activities; a higher excess and/or where cover would be inclusive of defence costs).

In order to determine whether it is appropriate to grant a dispensation, the Committee should consider:

- (i) whether the firm has ceased any involvement in the Activities;
- (ii) the availability of cover in the commercial market and the affordability of the premium that is likely to be charged in the Assigned Risks Pool;
- (iii) the risk of a claim arising from the Activities (the Committee should take into account how many clients are affected, the likely losses which could be suffered, whether any claims may fall outside of the relevant Limitation periods and whether liability may be restricted

by terms of engagement letters and any legal advice disclosed to it by the firm in respect of the likelihood of claims arising);

- (iv) whether the firm is likely to be able to meet any higher excess in the proposed policy for all claims falling due; and
- (v) in all of the circumstances, whether the dispensation will be in the public interest, balancing the likely impact on the clients affected by the exclusion or restriction with the potential impact on other clients / third parties if the firm were to cease practising with no cover in place for all other work carried out by the firm outside of the Activities.

The Committee should also be willing to grant a dispensation where a firm is able to put in place a self-insurance fund of an amount deemed acceptable to the Committee either immediately or over a reasonable period. Such a fund should be held in an escrow account (or other restricted account) for the duration of the non-compliant cover or until the risk of claims from the Activities has significantly diminished (to the satisfaction of the Committee), with money only being released to meet claims relating to the Activities (not defence costs). If Compliant Cover is still not available at the next renewal, the Committee can make the grant of a further similar dispensation conditional on the self-insurance fund remaining in place on the same terms.

If the Committee also consider in relation to (iv) above that there is a risk that the firm may not be able to meet the higher excess in the proposed policy for all claims falling due, rather than reject the application, the Committee should consider proposing a condition that the firm put in place, either immediately or within a reasonable period, a self-insurance fund on the same basis as is set out in the paragraph above.

The Committee should also consider whether a paid-for QAD visit should be made a further condition of the exemption in order to provide assurance to the Committee on one or more of the following:

- that the firm has ceased its involvement in the Activities;
- that the firm has complied with the conditions imposed by the Committee in respect of any self-insurance fund; and
- that the firm is taking steps to ensure that it will be in an improved position at the next policy renewal date to obtain compliant cover

### ***Dispensation applications under other limbs of PII Regulation 5.3***

Generally, in considering applications for dispensation, the Committee will have regard to the extent to which the proposed policy will depart from the minimum requirements set down in the PII Regulations and minimum approved wording. The following is a non-exhaustive list of factors which the Committee may consider in determining such applications having regard always to the primary purpose of ensuring that appropriate client protection arrangements are in place:

- the adequacy of the overall level of cover, having regard to the minimum limits of indemnity required by the regulations;
- the level of excess on the policy compared with the maximum level of aggregate excess permitted under regulation 3.7;
- whether the policy includes at least 6 years' retroactive cover;
- whether the excess is payable in respect of defence costs;
- whether defence costs are payable in addition to the limit of indemnity;
- whether the limit of indemnity includes cover for claimants' costs, expenses and disbursements;
- whether any territorial or jurisdiction restrictions operate on the policy to restrict coverage;
- whether the policy contains exclusions which significantly restrict the scope of cover compared with the minimum approved wording;

- whether the insurance has been, or will be, issued by a participating insurer (see appendix A);
- the applicant's regulatory and claims history; and
- the availability or otherwise of alternative cover in the market and efforts taken by the applicant to secure compliant cover.

The Committee may grant an application subject to conditions. The committee's decision will take effect as soon as it is served on the applicant individual or firm.