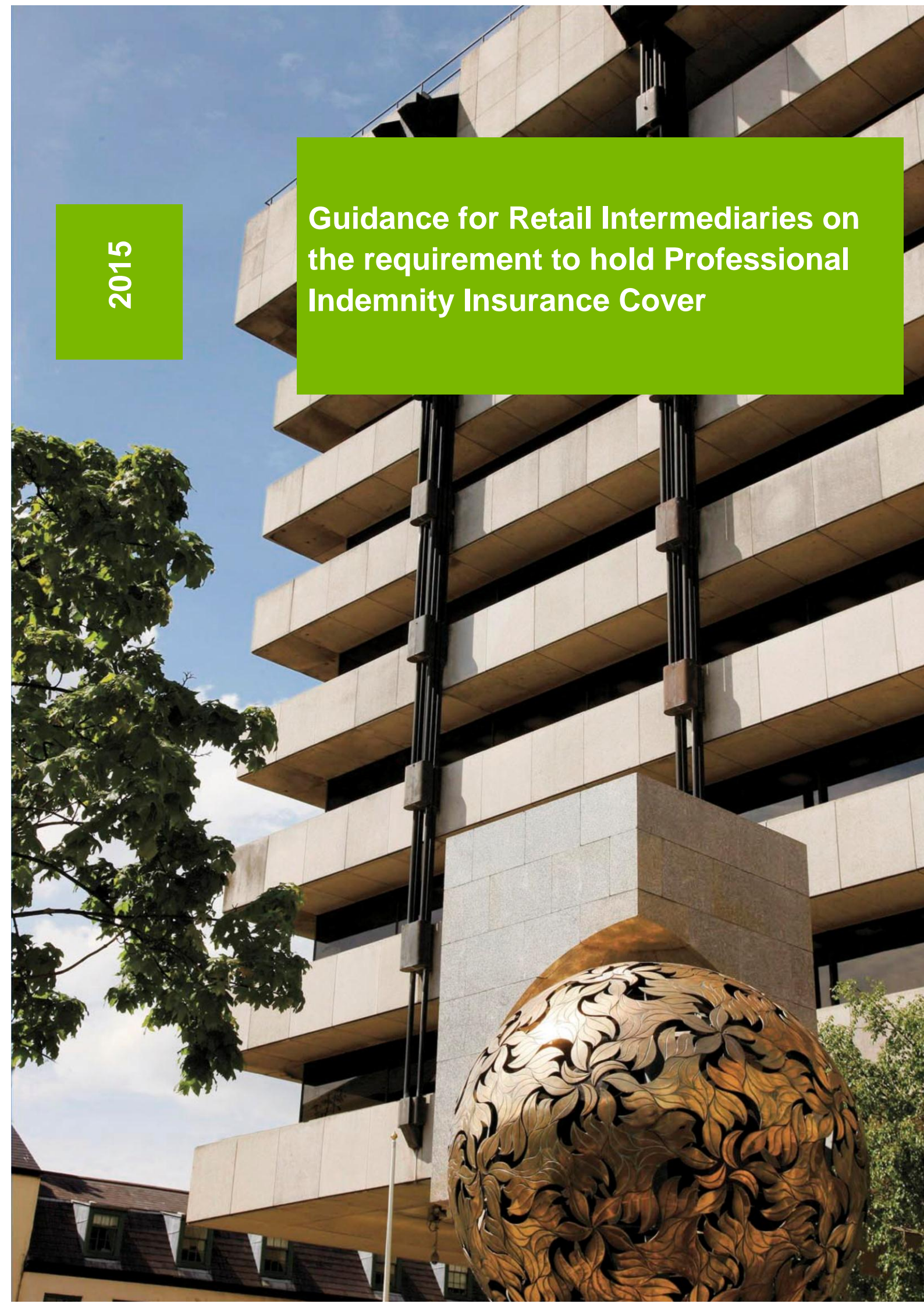


2015

Guidance for Retail Intermediaries on the requirement to hold Professional Indemnity Insurance Cover





Guidance on Professional Indemnity Insurance Cover

Holding the required level of Professional Indemnity Insurance ('PII') is a key prudential and consumer protection safeguard, and therefore as part of the on-going supervision of insurance/reinsurance intermediaries registered under the European Communities (Insurance Mediation) Regulations, 2005 (the "IMR") and investment intermediaries authorised under the Investment Intermediaries Act, 1995 (the "IIA"), the Central Bank of Ireland (the "Central Bank") monitors the requirement for intermediaries to hold adequate PII¹. Failure to comply with regulatory requirements in relation to PII cover is unacceptable and has/will lead to supervisory intervention (including, but not limited to, Administrative Sanction or involuntary revocation).

In accordance with the Insurance Mediation Directive, PII limits required to be held by insurance/re-insurance intermediaries registered under the IMR were reviewed by the Central Bank in 2013, by reference to the European Index of Consumer Prices, and revised limits of **€1.25m per claim** and **€1.85m aggregate cover per annum** were imposed on all new policies / renewals implemented after **1 August 2013**.

The Handbook of Prudential Requirements for Investment Intermediaries (the '2014 Handbook'), effective from **1 October 2014**, requires all investment intermediaries (as defined in the 2014 Handbook) to hold PII which mirrors the requirement set out in the IMR. This requirement was highlighted in the [September 2014 edition of the Intermediary Times](#).

Investment intermediaries that are also registered as insurance intermediaries under the IMR are required to hold ring-fenced cover relating to their investment business (in addition to the cover for their insurance intermediation business). These firms should ensure, when incepting or renewing a PII policy that it meets both the current requirements set out in Regulation 17 of the IMR and Requirements 4.1 and 4.2 of the Handbook.

1 Regulation 17 of the Insurance Mediation Regulations:

Regulation 17 of the IMR requires that every insurance intermediary and every reinsurance intermediary shall hold satisfactory professional indemnity insurance covering all of the Member States or some other comparable guarantee against liability arising from professional negligence-

*(a) for not less than the first prescribed amount [currently €1,250,000] for each claim received within each calendar year, and
(b) in aggregate, for not less than the second prescribed amount [currently €1,850,000] for all claims received within that year, unless the insurance or other guarantee is already provided by an insurance undertaking, a reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting, or for which it is empowered to act, or the undertaking has taken full responsibility for the intermediary's actions.*

The Handbook of Prudential Requirements for Investment Intermediaries sets out the PII requirement for IIA authorised firms as follows:

"Part 4: Professional Indemnity Insurance

4.1 An investment intermediary shall put in place and maintain a policy of professional indemnity insurance ("PII") covering the investment intermediary's activities in accordance with paragraph 4.2 below.

4.2 The amount insured shall, at a minimum, provide cover for €1.25 million per claim and €1.85 million in aggregate per type of regulated activity i.e. investment, insurance or debt management activity within each calendar year – (these amounts may be amended in line with the 5-year reviews under Regulation 17 (3) of the Insurance Mediation Regulations, 2005)."



The table below sets out the minimum level of cover required by an intermediary for each of its regulated intermediation activities:

Type of Activity	Minimum Individual Claim Cover	Minimum Aggregate Claim Cover (Ring-Fenced)
Investment Intermediary – Investment Intermediaries Act, 1995	€1.25 million	€1.85 million
Insurance Intermediary – Insurance Mediation Regulations, 2005	€1.25 million	€1.85 million
Any other Activity whether or not the activity is regulated by the Central Bank	Any other PII cover held should not impact the minimum ring-faced cover in relation each activity outlined above	

2014 Professional Indemnity Insurance Themed Inspection: Issues identified

Following the imposition of the revised PII limits on all new policies / renewals, the Central Bank conducted a themed inspection of 315 retail intermediaries, the findings from which were included in the [May 2015 edition of the Intermediary Times](#). A number of issues were identified that, in the Central Bank’s view, increased the risk of possible prudential concerns and consumer detriment and, as such, gave rise to concerns that some firms are not meeting the requirements to hold satisfactory PII cover under the IMR/IIA.

This Guidance document sets out the Central Bank’s views on ‘insufficient’ PII cover, based on issues identified during the themed inspection.

Ring-fencing of cover

A number of policies submitted provide cover in relation to numerous entitles and/or activities; both regulated and unregulated, for example, policy schedules which:

- covered all business undertaken by the firm, including both regulated and unregulated activities;
- included separate limited companies, partnerships or sole traders under one PII policy;
- included numerous regulated activities under one policy.



As these policies contain an aggregate limit, the entire cover may be used up without any claim being made in relation to services provided under the IMR/IIA. Where an aggregate limit applies to a policy, firms are required to hold separate, ring-fenced cover in relation to each authorised activity that requires the firm to hold PII cover. For example, a firm authorised under the IMR and also authorised as a debt management firm would be required to hold ring-fenced, aggregate PII cover of a minimum of €1.85 million in relation to each activity.

Excess/Deductible/Retention levels

A number of policies reviewed contained significant excess or deductible levels. For example, policies which:

- contained an excess of €15,000 for each and every claim;
- contained an excess of £100,000 per claim event in relation to General/Life (protection only) and £200,000 per claim event in relation to Life (excluding protection) insurance.

Firms should be aware that in the instance of a policy containing an excess/deductible/retention payable by the firm, the firm must be able to evidence to the Central Bank that it has the financial resources to pay this amount and still be in a position to meet any regulatory capital requirement on an on-going basis. The firm may be required to demonstrate that it is in a position to maintain adequate capital or other financial resources having regard to the volume and nature of its business and that it is able to meet its obligations to its creditors or its customers.

Ombudsmen awards

A number of policies reviewed contained exclusions, endorsements or sub-limits of liability limiting the maximum amount payable with regard to awards by Ombudsmen. For example, a PII policy reviewed during the course of this inspection contained an insuring clause stating that:

“The maximum amount payable by the company in respect of:

- a) any single award made by any ombudsman; or
- b) any series of awards by any ombudsmen attributable to the same originating cause;

shall not exceed €400,000.”

The Central Bank considers that the inclusion of a sub-limit of liability, endorsement or exclusion to this effect, which limits the amounts payable with regard to Ombudsmen awards, does not meet the requirements of firms to hold satisfactory PII cover under the IMR/IIA.



Exclusions

A number of policies reviewed contained specific activity exclusions in relation to particular products. For example, common exclusions included in many policies submitted related to the sale of, distribution of or the provision of any advice in relation to specific products, such as investment bonds. Firms may be required to demonstrate to the Central Bank how they are meeting their requirements to hold satisfactory PII cover in the instance of an exclusion of this nature, e.g. evidence that the firm was not involved in the sale of the product which is the subject of the exclusion.

Consequences of non-compliance

The obligation to ensure compliance with regulatory requirements rests with each regulated entity and its management. The firm's directors / partners / principals are reminded that it is the firm's continuing responsibility to ensure that its PII policy satisfies the requirements of Regulation 17 of the IMR and/or Part 4 of The Handbook of Prudential Requirements for Investment Intermediaries.

A failure to maintain satisfactory PII cover may expose the firm to the following:

Financial penalties and other administrative sanctions under Part IIIC of the Central Bank Act 1942

Cancellation of the firm's registration under the IMR pursuant to Section 11(1) of the IMR

Revocation of a firm's authorisation under Section 16(2) of the IIA

Notice

This Guidance document does not represent a comprehensive or exhaustive analysis of intermediaries' legal or regulatory obligations. Nothing in this Guidance document should be taken to represent legal advice with respect to the scope or interpretation of intermediaries' obligations and this Guidance document is provided for information purposes only. It is a matter for intermediaries to seek advice from their legal advisors with respect to their obligations. Firms are reminded that it is the responsibility of firms and individuals to operate in compliance with the provisions of the relevant legislation.



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