



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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

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

Holding the required level of Professional Indemnity Insurance (PII) is a key prudential and consumer protection safeguard. Therefore as part of the on-going supervision of insurance, reinsurance and ancillary insurance intermediaries registered under the European Union (Insurance Distributions) Regulations, 2018 (the IDR), investment intermediaries authorised under the Investment Intermediaries Act, 1995 (the IIA) and mortgage credit intermediaries authorised under the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016 (the CMCAR), the Central Bank of Ireland (the Central Bank) monitors the requirement for intermediaries to hold adequate PII. Failure to comply with regulatory requirements in relation to PII cover is unacceptable and has and will lead to supervisory intervention (including, but not limited to, administrative sanction or involuntary revocation).

Insurance Intermediaries

[Commission Delegated Regulation 2019/1935](#) amended the Insurance Distribution Directive¹ (and IDR), with regard to the base euro amounts of PII applicable to insurance and reinsurance insurance intermediaries. The Regulation entered into force on 12 December 2019 and applies from 12 June 2020.

In accordance with this Regulation, the minimum PII levels required to be held by insurance, reinsurance and ancillary intermediaries registered under the IDR are €1,300,380 per claim and €1,924,560 aggregate cover per annum and are imposed on all PII policies from 12 June 2020 onwards.

The European Insurance and Occupational Pensions Authority (EIOPA) is required to regularly review the base amounts for PII of insurance and reinsurance intermediaries to take into account the changes to the European index of consumer prices as published by Eurostat (the Index). Over the period 1 January 2013 through 31 December 2017, the Index increased by

¹ **Amendment to Article 10 of Directive (EU) 2016/97:** Paragraph 4 is replaced by the following:

“4. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1 300 380 applying to each claim and in aggregate EUR 1 924 560 per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.”

4.03%. Subsequently, the base amounts for PII have been increased, replacing the previous base amounts of €1,250,000 per claim and €1,850,000 in aggregate.

Investment Intermediaries

The Handbook of Prudential Requirements for Investment Intermediaries² (the Handbook), effective from **1 October 2014**, has been amended to require all investment intermediaries (as defined in the Handbook) to hold PII at a minimum of €1,300,380 per claim and €1,924,560 aggregate cover per annum. All Investment Intermediaries are required to have the appropriate limits in place from 12 June 2020 onwards, replacing the previous base amounts of €1,250,000 per claim and €1,850,000 in aggregate. The Central Bank amended the Handbook to align the PII requirements of investment intermediaries, authorised under the IIA, to the requirements applicable to intermediaries authorised under the IDR.

Investment intermediaries that are also registered as insurance intermediaries under the IDR 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 their PII policy meets both the current requirements set out in Regulation 21 of the IDR and Requirements 4.1 and 4.2 of the Handbook. Similarly, investment and/or insurance intermediaries that are also authorised as mortgage credit intermediaries under the CMCAR are required to hold the appropriate ring-fenced cover relating to their mortgage credit business. These firms should ensure that their PII policy meets the requirements set out in Regulation 30(3)(a) of the CMCAR.

Mortgage Credit Intermediaries

The CMCAR³ came into effect on 21 March 2016, and transposed the requirements of Directive 2014/17/EU into Irish law. The CMCAR introduced specific PII requirements for mortgage credit intermediaries.

² The amended 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 €1,300,380 per claim and €1,924,560 in aggregate for investment business activities. 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.

³ The requirement to hold PII is contained in the CMCAR, as follows:

Regulation 30(3)(a) The mortgage credit intermediary shall hold professional indemnity insurance covering the territories in which the intermediary offers services, or some other comparable guarantee against liability arising from professional negligence in accordance with the Directive."

It provides that a mortgage credit intermediary shall hold PII covering the territories in which the intermediary offers services, or some other comparable guarantee against liability arising from professional negligence. The minimum levels for PII cover set out in the [Commission Delegated Regulation 1125/2014](#)⁴ are €460,000 for each individual claim and €750,000 in aggregate per calendar year for all claims.

Minimum Level of Cover

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 Intermediaries – Investment Intermediaries Act, 1995	€1,300,380	€1,924,560
Insurance Intermediaries – Insurance Distribution Regulations, 2018	€1,300,380	€1,924,560
Mortgage Credit Intermediaries – Consumer Mortgage Credit Agreements Regulations, 2016	€460,000	€750,000
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	

⁴ The minimum levels for PII cover are set out in the Commission Delegated Regulation (EU) No 1125/2014, as follows:

“Article 1 The minimum monetary amount of the professional indemnity insurance or comparable guarantee required to be held by credit intermediaries as referred to in the first subparagraph of Article 29(2)(a) of Directive 2014/17/EU shall be:

(a) EUR 460 000 for each individual claim;

(b) in aggregate, EUR 750 000 per calendar year for all claims.”

Ring-fencing of cover

A number of PII policies reviewed by the Central Bank to date provide cover in relation to numerous entities and/or activities, both regulated and unregulated, for example, policy schedules which:

- cover all business undertaken by the firm, including both regulated and unregulated activities;
- include separate limited companies, partnerships or sole traders under one PII policy;
- include 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 IDR/IIA/CMCAR. 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 IDR and also authorised under the IIA would be required to hold ring-fenced, aggregate PII cover of a minimum of €1,924,560 in relation to each authorised activity.

Furthermore, the activities to be covered by the PII policy and the legislation under which these activities are authorised must be clearly set out in the policy documentation. The policy should include a reference to the relevant legislation and regulated activities (e.g., “investment advice/investment business services under the Investment Intermediaries Act 1995”; “insurance distribution under the European Union (Insurance Distribution) Regulations 2018”; “acting as a mortgage credit intermediary under the European Union (Consumer Mortgage Credit Agreements) Regulations 2016”).

Excess/Deductible/Retention levels

Firms should be aware that in the instance of a PII policy containing an excess/deductible/retention payable by the firm, the firm must be able to demonstrate to the Central Bank that it has the financial resources to pay this amount, that it is in a position to meet any applicable regulatory capital requirement on an on-going basis and that it is able to meet its obligations to its creditors or its customers.

Ombudsman Awards

The Central Bank considers that PII policies should not contain exclusions, endorsements or sub-limits of liability which would limit the maximum amount payable with regard to Ombudsman awards.

Exclusions

A number of policies contain specific activity exclusions in relation to particular products. For example, common exclusions included in many policies relate 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.

Inclusion of Retroactive dates

Clarification of the inclusion of retroactive dates in PII Policies has previously been provided by the Central Bank in the May 2013 issue of the [Intermediary Times](#). While the inclusion of a specified retroactive start date on PII policies is common practice, firms should be aware that the inclusion of a specified retroactive date in PII policies may result in the intermediary being in breach of its requirement to hold satisfactory PII cover. For example, any specified retroactive date must not post-date the Firm's date of authorisation.

For Investment Intermediaries authorised under the IIA, any specified retroactive date must not post-date the 1 October 2014, the date on which requirements to have PII for IIA authorised firms came into force.

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 21 of the IDR, and/or Part 4 of The Handbook and/or Regulation 30(3)(a) of the CMCAR.

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



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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