



February 2016

Statement of Guidance

Professional Indemnity Insurance

for

Trust, Insurance, Mutual Fund Administrator, Securities Investment Business and Company Management Licensees and Directors

1. Statement of Objectives

To set out the minimum criteria licensees should follow when obtaining and/or maintaining professional indemnity (PI) insurance in relation to undertaken business lines which pose the risk of losses arising from claims in respect of civil liability.

2. Introduction

2.1. Professional indemnity insurance is designed for professional individuals or businesses which provide advisory and other services to their customers. It protects the respective individual or business against legal costs and claims by third parties for damages arising from acts, omissions or breaches of professional duty.

2.2. This document establishes a Statement of Guidance on Professional Indemnity Insurance for licensees. Each licensee, where applicable, should assess the level of PI insurance or other appropriate arrangements necessary to deal with possible losses arising from civil liability claims in connection with its respective business. This Statement of Guidance sets out minimum standards with respect to PI coverage or other arrangement to cover similar risks.

3. Scope of Application

3.1. This Statement of Guidance applies to the following licensees (“Licensees”):

- a) Trust Companies – Licensed under the Banks and Trust Companies Law (2013 Revision)
- b) Insurance Brokers, Insurance Managers and Insurance Agents (unless there is evidence of a power of attorney, agency agreement



February 2016

- or guarantee between the insurance agent and insurer from whom the insurance agent acts) – Licensed under the Insurance Law 2010
- c) Mutual Fund Administrators – Licensed under the Mutual Funds Law (2015 Revision)
- d) Securities Investment Businesses – Licensed under the Securities Investment Business Law (2015 Revision)
- e) Corporate Services Providers and Company Managers – Licensed under the Companies Management Law (2003 Revision)
- f) Corporate and Professional Directors – Licensed under the Directors Registration and Licensing Law 2014

3.2. Provisions in law will take precedence over this Guidance, particularly those relating to the amount of cover. These provisions relate to current limit stipulations in the Insurance Law (2010), the Companies Management Law (2003 Revision) and the Directors Registration and Licensing Law (2014). Notwithstanding, these represent minimum coverage requirements and Licensees are expected to conduct comprehensive PI insurance adequacy assessments in line with this Guidance.

3.3. The Authority acknowledges that, as at the date of this Statement of Guidance, the Directors Registration and Licensing Law (“DRLL”) 2014 is not a regulatory law as defined by the Monetary Authority Law (2013 Revision) (“MAL”)¹. Statements of Guidance issued in accordance with the MAL apply only to regulatory laws. Additionally, Mutual Fund Administrators are not legally required to maintain PI insurance under the Mutual Funds Law (2015 Revision). Despite the foregoing, the Authority expects that Directors and Mutual Fund Administrators will follow this Guidance as a matter of best practice.

4. Need for Sufficient PI Insurance Coverage

4.1. Licensees should at all times maintain adequate PI insurance and, where practicable, this coverage should be held with an insurer licensed to carry on domestic business in the Cayman Islands.

4.2. A Licensee should implement this Guidance in proportion to the size, nature

¹ Instructions have been given to the legislative counsel to amend the MAL to include the DRLL as a regulatory law.



February 2016

and complexity of its business, following an appropriate risk assessment of possible loss exposures (both on an individual client and aggregate basis).

- 4.3. The PI insurance policy, or other similar risk mitigation arrangement, should include cover for claims arising from the business conduct by:
- (a) the Licensee;
 - (b) any of its current or former officers or employees; or
 - (c) any person who is or was an associate utilised by the Licensee.
- 4.4. Licensees should ensure that PI coverage extends to any third party agents, service providers (in the case of outsourced business) or consultants working for them or that these individuals secure their own adequate PI insurance cover.
- 4.5. Each Licensee, in determining PI insurance adequacy through comprehensive risk assessment, should consider the following factors:
- (a) Volume of business transacted;
 - (b) Number and type of clients;
 - (c) Worst loss scenario per individual client;
 - (d) Potential for multiple claims;
 - (e) Number of authorised representatives and/or employees;
 - (f) Proposed policy insurer definitions for limits, excesses and any other important conditions of coverage;
 - (g) Any impending or past legal actions (including suffered losses); and
 - (h) The potential financial exposures which may arise from gaps in coverage (and establish a risk framework to manage those risks).

This, however, is not an exhaustive list of the factors that Licensees should take into account in assessing what PI insurance cover is adequate. Licensees should also assess unique factors applicable to their business.

- 4.6. The limit and excess of PI insurance cover are fundamental items of consideration, though not the only important clauses. An adequate limit of liability should cover a reasonable estimate of potential losses and be determined having regard to:



February 2016

- (a) The maximum exposure to a single client;
- (b) The exposure for all clients, not solely retail clients or activities, as a claim from another party could exhaust the cover; and
- (c) The maximum probable number of claims that could arise from a single event, product or statement of advice.

A determination of excess should reflect what level of excess the business could sustain as an uninsured loss and what impact multiple claims (and therefore multiple excesses) would have on the Licensee's net asset position.

- 4.7. Unless a Licensee has access to group PI insurance, for example through its parent company or other appropriate arrangements to cover risks that are equivalent or exceed the requirements of the Authority, it should at all times maintain separate PI insurance cover.

5. Minimum Expectations for PI Insurance Cover

- 5.1. It is the responsibility of the Licensee to ensure that it has PI insurance or other appropriate arrangements to cover risks in any particular case. It is generally expected that the Licensees will maintain PI insurance cover which includes the following minimum policy features:

- (a) **Amount of Cover (Limit)** – The PI insurance policy should have a limit of at least \$1,000,000 for any one claim and \$1,500,000 in aggregate. Notwithstanding, the Authority acknowledges that some Licensees may require a higher limit based on the volume of business and risk profile. Consequently, in order to quantify this increased limit, a Licensee may determine a coverage limit based on annual turnover and maintain coverage of:

- 2.5 or 3 times the Licensee's previous year's annual income/turnover². For new Licensees, the projected income/turnover may be used in place of previous year's income/turnover.

² Income/Turnover refers to the amount of funds earned by the Licensee within a particular period (for the purposes of this SOG, a financial year). This income/turnover will primarily include, but is not limited to, fee income.



February 2016

- Trust companies, managers and administrators may determine a higher amount of coverage which is at least 0.7% of assets under management and 0.9% in aggregate.
- (b) **Excess/Deductibles** – The excess or deductible should be at a level that the Licensee can confidently sustain as an uninsured loss, taking into account the Licensee’s financial resources.
- (c) **Scope of Indemnification** – The policy should indemnify the Licensee against liability for loss or damage suffered because of foreseeable potential breaches by the Licensee and its representatives including negligence, errors and omissions.
- (d) **Exclusions** – The policy should not have the effect of excluding scenarios which will undermine the policy objective. This applies especially to exclusions that relate directly to the minimum scope of cover described above.
- (e) **Persons Covered** – The policy should cover the acts of the Licensee and all of its representatives (either under the policy or separately covered by a policy under which the Licensee has a right of indemnity).
- (f) **Automatic Reinstatement** – The policy should include at least one automatic reinstatement. Automatic reinstatement means that if the limit of the policy is exhausted before the end of the policy period, the limit of indemnity is reinstated for the balance of the period to cover any new claims that might arise. This is important, as Licensees should ensure their PI insurance cover is adequate at all times.
- (g) **Legal Costs** – Costs of defending a claim should be ‘in addition’ to the minimum limit or the level of cover should be sufficiently increased to take into account these costs. Legal costs may be significant and ultimately erode the net value of policy coverage if not adequately provided for. Notwithstanding, it is important to note that PI insurance cannot be used to pay fines or penalties imposed by the regulator.
- (h) **Fraud/Dishonesty/Infidelity** – The policy should cover fraud, dishonesty or infidelity by directors, employees and other representatives of the Licensee.
- (i) **Retroactive Cover** – If the Licensee had an immediately previous PI insurance policy, the current policy should provide cover to the earlier of:



February 2016

- i) The retroactive date specified in the immediately previous PI insurance policy; or
 - ii) The commencement date of the first PI insurance policy in the series of continuous policies
- (j) **Run-off Cover** – The PI insurance policy should include run-off cover for claims made against relevant persons who retire during the course of the policy period.

5.2. Licensees should maintain records of how determinations are made on the adequacy of PI insurance coverage.

5.3. Licensees should review the adequacy of PI insurance coverage regularly, at least once every two (2) years.

6. Financial Strength of Insurance Provider

6.1. Licensees should seek to select insurers that have a proven track record of being willing and able to meet their obligations as they fall due. In this regard, Licensees, where available, should use the A.M. Best, Fitch, Moody's or Standard & Poor's financial strength rating of the insurer as the basis of insurer selection.

6.2. An A.M. Best rating of B+, or its equivalent, should be the minimum rating criteria when choosing PI insurance providers which have been independently rated. The Licensee should monitor and review its insurer's financial strength at least upon the renewal of insurance coverage.

7. Certificate of PI Insurance

7.1. The insurer should issue annually a certificate of insurance to the Licensee upon payment by the Licensee of the relevant insurance premium.

7.2. The certificate of insurance should specify the amount of insurance coverage provided to the Licensee, the expiration date and any exclusions and/or limitations.

7.3. The Authority may, at any time, by notice in writing request a copy of the current certificate of insurance or evidence that the Licensee has access to PI



February 2016

insurance cover or other appropriate arrangements to cover risks.

8. Other Appropriate Arrangements for PI Insurance

- 8.1. Licensees may opt to use appropriate alternative arrangements to PI insurance. The Authority will only approve, and Licensees should only use, alternative arrangements that are equivalent in effect to and give no less protection than adequate PI insurance coverage.
- 8.2. The Licensee should seek the written approval of the Authority for other appropriate arrangements that have similar effect to the minimum coverage of PI insurance. These include, but are not limited to, group coverage, commitment by parent or other appropriate body, guarantee, own funds, cash reserves, self-insurance approaches or industry member funds. These other appropriate arrangements should be in the form of written enforceable agreements, with the period of coverage specified.
- 8.3. Requests for approval of an appropriate alternative arrangement should address the following issues:
- (a) Details, structure, features and funding method of the proposed arrangement;
 - (b) Financial strength of the parent company, where the alternative is a commitment from that parent.
 - (c) Which Licensees will be covered by the arrangement (in cases where the arrangement covers a group of related Licensees or an industry sector);
 - (d) How the arrangement corresponds to the criteria for assessing PI insurance under this Guidance;
 - (e) Any benefits, risks or costs arising from the Licensees using these arrangements as opposed to PI insurance;
 - (f) Any circumstances particular to the Licensee or the industry sector which make these arrangements more appropriate than PI insurance; and
 - (g) Assurance from the third party provider that the arrangement will be enforceable in the event of fraud by agents or officers of the Licensee.

8.4. Where the other appropriate arrangement to PI insurance involves a group of



February 2016

entities, then the Licensee should have access to sufficient PI insurance coverage within the adequacy parameters specified in section 5 above.

8.5. The Authority may ask for an expert report to assess whether the proposed arrangement gives no less protection than PI insurance.

9. Notification Requirements

9.1. Licensees should confirm annually in writing, or through submission of an attachment to its annual returns, to the Authority that PI insurance or other appropriate arrangements exist. Such notification can be done at the time of renewal of the licence. The confirmation should include:

- the name of the insured;
- the policy number, where applicable;
- the amount applicable to the Licensee and type of coverage (including persons covered);
- the amount of excess/deductible, if any;
- the retroactive date and explanation as to why it has been applied by the insurer, if any;
- the name, address and financial strength rating of the insurer or body with which the other appropriate arrangement was made;
- the exclusions and/or limitations specific to the business;
- other clause highlights relating to reinstatement, legal cost coverage, run-off coverage and fraud/dishonesty/infidelity coverage;
- the expiry date of coverage; and
- whether the Licensee is named on PI insurance policy or other appropriate arrangement which provides cover for more than one entity.

9.2. Licensees should notify the Authority in writing where, during the term of policy or other appropriate arrangement, the Licensee starts a business line



February 2016

for which it has not obtained PI insurance cover. The Licensee should also notify the Authority in writing if:

- PI insurance cover or other appropriate arrangement (where applicable) cannot be obtained within 28 days of the renewal date; or
- PI insurance cover or other appropriate arrangement is cancelled.

9.3. Licensees should promptly alert their respective insurer of all potential claim(s) and the Authority of all material claim(s) which may arise.

CONSULTATION DRAFT