

STATUTORY INSTRUMENTS.

S.I. No. X of 2016

COMPANIES ACT 2014 (PROFESSIONAL INDEMNITY
INSURANCE) (LIQUIDATORS) REGULATIONS 2016

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The Irish Auditing and Accounting Supervisory Authority in exercise of the powers conferred on it by section 634 of the Companies Act 2014 (No. 38 of 2014), hereby makes the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Companies Act 2014 (Professional Indemnity Insurance) (Liquidators) Regulations 2016.

(2) These Regulations shall come into operation on [11 March 2016].

Definitions

2. (1) In these Regulations-

“Act” means the Companies Act 2014 (No. 38 of 2014);

“circumstance” means an incident, fact, occurrence, matter, act or omission that may give rise to a claim;

“claim” means a request or demand for, or an assertion of a right to, or an intimation of an intention to seek-

(a) civil compensation of any nature,

(b) civil damages of any nature;

“defence costs” means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of an insurance undertaking in relation to a claim including without limitation the costs of:

(a) defending any proceedings, or

(b) conducting any proceedings for indemnity, contribution or recovery,

or

(c) investigating, reducing, avoiding or compromising any actual or potential claim;

but the term “defence costs” does not include any internal overhead expenses of an insured or former insured or an insurance undertaking or the cost of any insured’s or former insured’s time;

“former insured” means a person who previously fulfilled paragraph (a) of the definition of an insured but no longer does so, during or on expiry of a period of cover;

“insolvency event”, in relation to an insurance undertaking, means-

(a) the appointment of a liquidator, receiver, administrative receiver, administrator or examiner to the insurance undertaking (or analogous appointment being made in respect of the insurance undertaking in any jurisdiction outside the State),

- (b) the passing by the members of an insurance undertaking of a resolution for a voluntary winding-up (or an analogous step being taken in relation to an insurance undertaking in any jurisdiction outside the State),
- (c) the making of a winding-up order in relation to an insurance undertaking (or an analogous order being made in relation to an insurance undertaking in any jurisdiction outside the State), or
- (d) the approval of a voluntary arrangement or similar form of composition with creditors in respect of an insurance undertaking (or an analogous event occurring in relation to an insurance undertaking in any jurisdiction outside the State);

“insured” means-

- (a) a person qualified for appointment as a liquidator of a company pursuant to section 633 of the Act and includes a provisional liquidator,
- (b) any servant or agent of a person referred to in paragraph (a); or
- (c) both of them;

“non-performance event” means, in relation to an insurance undertaking, the loss by that insurance undertaking of its ability to lawfully fulfil any obligations undertaken by it in respect of professional indemnity insurance in the State (whether by withdrawal or qualification of its authorisation to do so or otherwise);

“period of cover” means the period for which the insurance held by the insured provides cover;

“run-off cover” means a policy or policies of insurance for a former insured;

“run-off period” means the period of 6 years immediately following the end of the former insured’s last period of cover as an insured;

“self-insured excess” means an amount that the insured is required, by the terms of any contract between the insured and the insurer, to pay to the claimant in the event of a claim.

Scope of cover

3. The professional indemnity insurance effected and maintained by an insured in accordance with section 634(1) of the Act shall-

- (a) indemnify each insured against civil liability incurred by an insured arising from the conduct of the insured in the winding up of a company provided that:
 - (i) a claim in respect of such civil liability is first made against the insured during the period of cover, or
 - (ii) such civil liability arises from a circumstance first notified to the insurer during the period of cover

and

- (b) indemnify the insured against defence costs in relation to any claim referred to in subparagraph (a) and provide that such defence costs will be met by the insurer as and when they are determined due and payable.

Minimum level of cover

4. (1) Subject to paragraph (2), the professional indemnity insurance effected and maintained by an insured in accordance with section 634(1) of the Act shall-

(a) provide a limit of liability for each and every claim (exclusive of defence costs) of not less than €1,500,000,

(b) provide cover for defence costs.

(2) The limit of liability referred to in paragraph (1) shall equal at least the estimated realisable value of the assets of the company which is being wound up, as estimated by the insured.

(3) The estimate referred to in paragraph (2) shall be carried out as soon as practicable and, in any event, within three months of the date of the appointment of the insured.

Self-insured excess

5. (1) An insured shall be permitted to agree with his or her insurance undertaking a self-insured excess in respect of professional indemnity insurance to be borne by the insured in the event of a claim, provided that the insurance undertaking has agreed that, in any case where the insured defaults in making payment of any part of such self-insured excess to a claimant within 30 days of it becoming due, the insurance undertaking will pay the outstanding amount directly to the claimant.

(2) Where an insurance undertaking makes a payment as described in paragraph (1), the insurance undertaking shall be entitled to recover from the insured any amount so paid.

(3) Where a self-insured excess referred to in paragraph (1) is agreed between the insured and the insurance undertaking, the relevant insurance policy shall provide that that excess does not reduce or limit the liability of the insurer specified in Regulation 4.

(4) The self-insured excess referred to in paragraph (1) shall not apply to defence costs.

(5) Every insured shall make prompt payment to a claimant, in the event of a claim being upheld against it, of the amount of any self-insured excess provided for under the policy of insurance within 30 days of it becoming due to the claimant.

Maintenance of insurance in run-off

6. (1) Where immediately prior to the commencement of a run-off period, a former insured held professional indemnity insurance with an insurance undertaking, the former insured shall maintain in place run-off cover with an insurance undertaking during the run-off period in respect of the insured's former practice as a liquidator and such cover effected and maintained by the former insured shall-

(a) provide a limit of liability for each and every claim (exclusive of defence costs) of not less than €1,500,000,

(b) provide cover for defence costs.

(2) Where a person becomes a former insured during or on expiry of a period of cover, the former insured shall ensure that the insurance provides run-off cover for the first 6 years from the date upon which the former insured's past period of cover expires.

Insolvency of insurance undertakings and other events

7. Where an insured or former insured has effected professional indemnity insurance or run-off cover with an insurance undertaking in accordance with Regulation 4 or 6 and an insolvency event or non-performance event occurs in respect of the insurance undertaking, the insured or former insured shall, as soon as reasonably practicable and in any event not later than 10 working days after the date upon which such insolvency event or non-performance event occurs (but not counting the date upon which such event occurs) establish and maintain in place professional indemnity insurance or run-off cover that complies with the requirements of these Regulations with an insurance undertaking that is unaffected by an insolvency event or non-performance event.

Cover for dishonest or fraudulent acts or omissions

8. (1) The professional indemnity insurance may exclude liability of the insurance undertaking to indemnify an insured or former insured under the relevant insurance to the extent that any civil liability or related defence costs arise from the dishonesty of or a fraudulent act or omission committed or condoned by that insured or former insured, provided that the insurance must nonetheless cover each other insured.

(2) The professional indemnity insurance must provide that no dishonesty, act or omission will be imputed to another insured or former insured unless it is committed or condoned by that insured or former insured.

Endorsements on existing policies

9. Where an insured already holds professional indemnity insurance, other than that required by section 634(1), it shall not be necessary for an insured or former insured to obtain an additional policy of insurance in order to satisfy the requirements of these Regulations, if the insured or former insured obtains an endorsement on the existing professional indemnity insurance policy to the effect that the existing insurance meets the requirements of these Regulations.

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GIVEN under the seal of the Irish Auditing and Accounting Supervisory Authority

[March 2016]

Michael Kavanagh
(Interim) Chief Executive Officer and Director

Fergal Ó Briain
Secretary

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations prescribe the amount and terms of professional indemnity insurance required to be held by a liquidator of a company.

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