

Insurance: Conduct of Business

Chapter 8

Claims handling

8.4 Employers' Liability Insurance

Application

8.4.1

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- (1) The general application *rule* in ■ ICOBS 1.1.1 R applies to this section subject to the modifications in (2).
- (2) This section applies to:
 - (a) any *firm* solely with respect to the activities of:
 - (i) *carrying out contracts of insurance*; or
 - (ii) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;

in relation to *general insurance contracts* and, in either case, including business accepted under *reinsurance to close*.
 - (b) [deleted]
- (3) In this section references to:
 - (a) an '*employers' liability register*' are to the employers' liability register referred to in ■ ICOBS 8.4.4R (1)(a);
 - (b) a '*director's certificate*' are to a statement complying with the requirements in ■ SUP 16.23A;
 - (c) *employers' liability insurance* include business accepted under *reinsurance to close covering employers' liability insurance* (including business that is only included as *employers' liability insurance* for the purposes of this section);
 - (d) a '*qualified director's certificate*' are to the statement complying with the requirements in ■ SUP 16.23A.5R; and
 - (e) a '*historical policy*' are to a *United Kingdom* commercial lines *employers' liability insurance policy* or other evidence of cover issued or renewed before 1 April 2011.

8.4.2

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■ ICOBS 8.4 does not generally apply to activities carried out in relation to a *reinsurance contract* (see ■ ICOBS 1.1.2 R and ■ ICOBS 1 Annex 1 Part 2 1.1 R) but it does apply to business accepted under *reinsurance to close*.

Purpose

8.4.3

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The purpose of ■ ICOBS 8.4 is to assist individuals with claims arising out of their course of employment in the *United Kingdom* for employers carrying on, or who carried on, business in the *United Kingdom*, to identify an *insurer*

or *insurers* that provided *employers' liability insurance* (other than certain co-insurance and excess cover arrangements) by requiring *insurers* to produce an employers' liability register and to conduct effective searches for historical *policies*. In particular it aims to assist ex-employees whose employers no longer exist or who cannot be located.

Principal obligation to produce an employers' liability register

8.4.4

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- (1) A *firm* carrying out contracts of insurance, or a managing agent managing *insurance business*, including in either case business accepted under *reinsurance to close*, which includes *United Kingdom* commercial lines *employers' liability insurance*, must:
 - (a) produce an employers' liability register complying with the requirements in (2) and ■ ICOBS 8 Annex 1;
 - (b) [deleted]
 - (c) [deleted]
- (1A) [deleted]
- (2) For the purposes of (1)(a) the employers' liability register is required to:
 - (a) include the date upon which the register was produced;
 - (b) include a database which:
 - (i) reliably stores information required by ■ ICOBS 8 Annex 1;
 - (ii) in relation to information required by ■ ICOBS 8 Annex 1 1.1R(1), contains accurate information and, in relation to information required by ■ ICOBS 8 Annex 1 1.1R(2), contains information which faithfully reproduces the information that the *firm* has; and
 - (iii) has an effective search function which allows a person inputting data included on the register relating to a particular employer over a particular period to retrieve information on the register relating to a potential employers' liability claim corresponding to that employer and period;
 - (c) allow for requests for information or searches relating to a potential claim to be made by:
 - (i) individuals with the potential claim, or their authorised representative, or
 - (ii) any employer to whom the potential claim relates; or
 - (iii) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
 - (iv) a relevant *insurance intermediary* acting for an *insurer* in (iii);
 - (d) allow for requests by a tracing office which meets the conditions in ■ ICOBS 8.4.9R relating to the use of information on the *firm's* register to the extent that the information is necessary, and used solely, to enable the tracing office to provide comprehensive searching facilities to its users; and
 - (e) allow for responses to requests or searches in (c) to be provided without delay.

- (3) [deleted]
- (4) For the purposes of (1):
 - (a) *United Kingdom commercial lines employers' liability insurance* means commercial lines *employers' liability insurance* where both the employer's business was or is carried on, and the employees' course of employment was or is, in the *United Kingdom*; and
 - (b) commercial lines business comprises *contracts of insurance* carried out in relation to *persons whose employers' liability insurance* relates to a business or profession they carry on.

8.4.4A R [deleted]

8.4.4B G [deleted]

8.4.4C R [deleted]

8.4.5 G (1) For the purposes of ■ ICOBS 8.4.4R (2)(c) and ■ ICOBS 8.4.4R (2)(d), a *firm* may put in place appropriate screening on its employers' liability register to monitor:

- (a) requests for information and searches to ensure that they are being made for a legitimate purpose by persons falling into one of the categories in ■ ICOBS 8.4.4R (2)(c); and
- (b) requests from tracing offices to ensure that the information is necessary, and will only be used by the tracing office, for the purposes of providing users of the tracing service with the same information as the *firm* itself would have provided had the inquirer approached the *firm* directly.

If a *firm* has any reason to suspect that the information is, or may be, being misused then it may restrict the use of the information provided or request its return.

- (2) For the purposes of ■ ICOBS 8.4.4R (2)(e) the *FCA* expects that, in the ordinary course, a person searching or making an information request will be provided with a response within one *business day* of the initial request.
- (3) In the *FCA's* view, commercial lines business does not include *employers' liability insurance* provided for retail consumers, for example, in relation to insurance taken out to cover liability in relation to domestic arrangements such as home help.

FCA notification requirements

8.4.6 R A *firm* must:

- (1) notify the *FCA*, within one *month* of falling within ■ ICOBS 8.4.1R (2), as to whether or not it, or, if relevant, a member of the *syndicates* it manages, carries on business falling within ■ ICOBS 8.4.4R (1) and, if it does, include in that notification:

- (a) details of the internet address of the *firm* or tracing office at which the employers' liability register is made available;
 - (b) the name of a contact person at the *firm* and their telephone number or postal address, or both; and
 - (c) the period over which the *firm* or *syndicate* member provided cover under relevant *policies* or, if still continuing, the date that cover commenced; and
 - (d) the *firm's* Firm Reference Number; and
- (2) ensure that the notification in (1):
- (a) is approved and signed by a *director* of the *firm*; and
 - (b) contains a statement that to the best of the *director's* knowledge the content of the notification is true and accurate.

8.4.6A **R** A *firm* with potential liability under an *excess policy* and which satisfies the requirements in ■ ICOBS 8 Annex 1 1.1B R must notify the *FCA* before the date upon which it first seeks to rely upon that *rule* and ensure that the requirements of ■ ICOBS 8.4.6R (2) are satisfied in respect of this notification.

Requirement to make employers' liability register and supporting documents available

8.4.7 **R**

(1) A *firm* must make available:

- (a) the information on the employers' liability register either:
 - (i) on the *firm's* website at the address notified to the *FCA* in ■ ICOBS 8.4.6R (1); or
 - (ii) by arranging for a tracing office which meets the conditions in ■ ICOBS 8.4.9 R to make the information available on the tracing office's website; and
- (b) the latest *director's* certificate prepared in accordance with ■ SUP 16.23A.5R(1) and the latest report prepared by an auditor for the purposes of ■ SUP 16.23A.6R(1), to a tracing office which has obtained information from the *firm* for the purposes of providing comprehensive tracing information, in accordance with ■ ICOBS 8.4.4R (2)(d), provided that the tracing office has agreed with the *firm* not to disclose confidential information in the certificate and the report to third parties, save as required by law.

(2) If a *firm* arranges for a tracing office to make information available for the purposes of (1)(a)(ii) the *firm* must:

- (a) send to the tracing office copies of its latest *director's* certificate and report prepared by the *firm's* auditor provided that the tracing office has agreed with the *firm* not to disclose confidential information in the certificate and the report to third parties, save as required by law;
- (b) maintain records of all the tracing information and copies of all documents it has provided to the tracing office;
- (c) retain all legal rights in relation to the ownership and use of the information and documents provided to the tracing office to

- enable the *firm* to provide that information or documentation to another tracing office or to make it available itself; and
- (d) send to the tracing office its Firm Reference Number.

8.4.8

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For the purposes of ■ ICOBS 8.4.4R (2)(d) and ■ ICOBS 8.4.7R (1)(a)(ii) the existence of published and up-to-date versions of both a certificate from the *directors* of the tracing office, stating that the tracing office has complied in all material respects with the requirements in ■ ICOBS 8.4.9R (1) to ■ (6), and a report under a *reasonable assurance engagement*, addressing the accuracy and completeness of the tracing office's database, may be relied upon as tending to establish that a *firm* has satisfied the requirement to use a tracing office which meets the conditions in ■ ICOBS 8.4.9R (1) to ■ (6).

Qualifying tracing offices

8.4.9

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The conditions referred to in ■ ICOBS 8.4.4R (2)(d) and ■ ICOBS 8.4.7R (1)(a)(ii) are that the tracing office is one which:

- (1) maintains a database which:
 - (a) accurately and reliably stores information submitted to it by *firms* for the purposes of complying with these *rules*;
 - (b) has systems which can adequately keep it up to date in the light of new information provided by *firms*;
 - (c) has an effective search function which allows a person inputting data included on the database relating to a particular employer over a particular period to retrieve information on the database relating to a potential employers' liability claim corresponding to that employer and period;
- (2) maintains adequate records of the *director's* certificates and reports prepared by an auditor sent to it by *firms* for the purposes of complying with these *rules*;
- (3) has effective arrangements for information security, information back up and business continuity and to prevent the misuse of data;
- (4) accepts search requests in relation to information in (1) relating to a potential claim from:
 - (a) individuals with the potential claim, or their authorised representative; or
 - (b) the employer to whom the potential claim relates; or
 - (c) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
 - (d) a relevant *insurance intermediary* acting for an *insurer* in (c);
- (5) provides responses to requests in (4) without delay;
- (6) has adequate arrangements for providing to a *firm*, upon request and without delay, a full copy of the information on the database that the *firm* has provided to it;
- (7) includes in its published annual report:

- (a) a certificate from the *directors* of the tracing office stating whether the tracing office has complied with the requirements in (1) to (6) in relation to the period covered by the annual report; and
 - (b) an independent report commissioned under a *reasonable assurance engagement* satisfying the requirement in ■ ICOBS 8.4.9A R, addressing the accuracy and completeness of the database, prepared by an auditor satisfying the requirements of ■ SUP 3.4 and ■ SUP 3.8.5 R to ■ SUP 3.8.6 R, and addressed to the *directors* of the tracing office; and
- (8) provides to a *firm* making use of the tracing office for the purposes of ■ ICOBS 8.4.7R (1)(a)(ii):
- (a) a copy of its annual report promptly after publication; and
 - (b) upon request and without delay a full copy of the information on the database that the *firm* has provided to it.

8.4.9A

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The requirement referred to in ■ ICOBS 8.4.9R (7)(b) is that the report must include an opinion from the auditor confirming whether, in all material respects, the tracing office maintains a database which accurately and reliably stores information submitted to it by *firms* for the purpose of complying with relevant requirements in ■ ICOBS 8.4 and that it has systems which can adequately keep it up to date in the light of new information provided by *firms*.

8.4.10

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- (1) ■ ICOBS 8.4.4R (2)(b) and ■ ICOBS 8.4.9R (1) require a *firm*, or a tracing office used by a *firm*, to have an effective search function in relation to the employers' liability register database. In the *FCA's* view an effective search function is one which finds all matches in the register to any specified whole word.
- (2) For the purposes of ■ ICOBS 8.4.9R (5) the term 'without delay' should have the same meaning as in ■ ICOBS 8.4.5G (2).
- (3) In order to assist *firms* with their obligations under these *rules* the *FCA* has agreed to publish on its website at www.fca.org.uk/consumers/employers-liability-insurance a list of *persons* providing tracing office facilities which have published the *directors'* certificate and independent assurance report referred to in ■ ICOBS 8.4.9R (7).

Updating and verification requirements

8.4.11

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- (1) A *firm* must notify the *FCA*:
 - (a) of any information provided to the *FCA* under ■ ICOBS 8.4.6 R or ■ ICOBS 8.4.6A R which ceases to be true or accurate; and
 - (b) of the new position, in accordance with the notification requirements in ■ ICOBS 8.4.6 R;
 within one *month* of the change.
- (2) A *firm* producing an employers' liability register must:
 - (a) update the register with any new or more accurate information falling within ■ ICOBS 8 Annex 1:

- (i) by virtue of the entry into or renewal of, or of a claim made in relation to, a *policy*, as required by ■ ICOBS 8 Annex 1 Part 1; and
- (ii) in all other cases, by virtue of the *firm* having received that new or more accurate information;
- (b) make the updated information in (a) available, in accordance with ■ ICOBS 8.4.7 R, no later than:
 - (i) in relation to new or more accurate information arising out of the entry into or renewal of, or a claim made in relation to, a *policy*, three *months* from the date of entry, renewal or the date upon which the claim was made; and
 - (ii) in all other cases, three *months* from the date upon which the *firm* received the new or more accurate information;
- (c) update the register, no less frequently than once every three *months*, and include the date that the register was updated and a statement that the register may be relied on as up-to-date as at a date three *months* prior to the date upon which the register was updated, or such later date as applicable to the *firm*;

8.4.12 G For the purposes of ■ ICOBS 8.4.11R (2)(c) a *firm* is required to include the date at which it updates the register. However, depending on the *firm's* processes for making information available for the purposes of ■ ICOBS 8.4.11R (2)(b), the register may only be relied upon as being up-to-date as at a date three *months* prior to the date on which the *firm* has updated the register, or such lesser period as applicable to the *firm* as is consistent with the *firm's* processes. ■ ICOBS 8.4.11R (2)(c) requires the *firm* to include a statement as to the date at which the register may be relied upon as containing up-to-date information which can be no earlier than three *months* prior to the new date on the register, but may be later depending on the *firm's* circumstances.

8.4.12A R

- (1) For the purposes of ■ ICOBS 8.4.11R (2)(a), ■ 8.4.11R (2)(b) and ■ ICOBS 8 Annex 1 a claim is deemed to be made in relation to a *policy* at the date on which the *firm* establishes, or otherwise accepts, that it has provided relevant cover under the *policy*, and is therefore potentially liable subject to the terms of the *policy*.
- (2) A *firm* must use reasonable endeavours to establish whether it has provided relevant cover:
 - (a) within three *months* of being notified of a potential claim; or
 - (b) if that is not possible, as soon as is reasonably practicable thereafter.

Transfers of insurance business

8.4.13 R The transferor in an *insurance business transfer scheme* must provide the transferee with the information and documents the transferor holds in compliance with ■ ICOBS 8.4 in respect of the insurance business transferred.

Requirement to conduct effective searches for historical policies

- 8.4.14** **R** A firm with actual or potential liability for *United Kingdom* commercial lines employers' liability insurance claims must take reasonable steps to conduct effective searches of their records when they receive a request to carry out a search for a historical *policy* from persons falling into one of the categories in ■ ICOBS 8.4.4R (2)(c) or a tracing office which meets the conditions in ■ ICOBS 8.4.9 R.
- 8.4.15** **R** A firm must put in place a written policy for complying with ■ ICOBS 8.4.14 R and operate in accordance with it. The policy must cover at least the following matters:
- (1) details of where the *firm's* historical *policies* are held or are likely to be held (including details of records which are archived or stored off site);
 - (2) details of the different types of records to be searched by the *firm*, such as electronic files, paper files, and microfiche; and
 - (3) details of how the searches will be carried out, including a description of how and in what circumstances the *firm* may decide not to conduct a search.
- 8.4.16** **R**
- (1) When a *firm* receives a request under ■ ICOBS 8.4.14 R, from a qualifying tracing office, it must provide a response, in writing, to the requestor within one *month* of receiving the request.
 - (2) This rule does not apply when the *firm* has conducted a search but no historical *policies* have been found.
 - (3) When a *firm* receives a request under ■ ICOBS 8.4.14 R, other than from a qualifying tracing office, it must provide a response, in writing, to the requestor within two *months* of receiving the request in accordance with ■ ICOBS 8.4.17 R.
- 8.4.17** **R**
- (1) Where a *firm* has established that a historical *policy* does exist, the response should confirm what cover was provided and set out any available information that is relevant to the request received.
 - (2) Where there is evidence to suggest that a historical *policy* does exist, but the *firm* is unable to confirm what cover was provided, the response should set out any information relevant to the request and describe the next steps (if any) the *firm* will take to continue the search.
 - (3) Subject to ■ ICOBS 8.4.16R (2), where the *firm* has conducted a search, but no historical *policies* have been found, the response should set this out clearly and explain that reasonable steps were taken to conduct an effective search.