

## Chapter 3

# Professional indemnity insurance

## 3.1 Application and purpose

### Application

#### 3.1.1

**R**

(1) [deleted]

(1A) Subject to the exceptions in (3) to (8), this chapter applies to a *firm* with *Part 4A permission* to carry on any of the following activities:

- (a) *insurance distribution activity*;
- (b) *home finance mediation activity*; and
- (c) *MCD article 3(1)(b) credit intermediation activity*.

(2) [deleted]

(3) In relation to *insurance distribution activity*, this chapter does not apply to a *firm* if another *authorised person* which has net tangible assets of more than £10 million provides a comparable guarantee; for this purpose:

- (a) if the *firm* is a member of a *group* in which there is an *authorised person* with net tangible assets of more than £10 million, the comparable guarantee must be from that *person*;
- (b) A 'comparable guarantee' means a written agreement on terms at least equal to those in a contract of professional indemnity insurance (see ■ MIPRU 3.2.4 R) to finance the claims that might arise as a result of a breach by the *firm* of its duties under the *regulatory system* or civil law.

(4) In relation to *home finance mediation activity*, this chapter does not apply to:

- (a) any *firm* which is an *MCD mortgage credit intermediary* exclusively advising on or arranging *second charge regulated mortgage contracts* (except for ■ MIPRU 3.2.9A R);
- (b) a *firm* that is subject to ■ MIPRU 3.2.9R; if:
  - (i) it has net tangible assets of more than £1 million; or
  - (ii) the comparable guarantee provisions of (3) apply (as if the *firm* was carrying on *insurance mediation activity*) but substituting £1 million for £10 million in (3)(a) and (b); or
- (c) a *firm* which carries on *home finance mediation activity* exclusively for *legacy CCA mortgage contracts*;

(5) This chapter does not apply to:

- (a) an *insurer*; or

- (b) a *managing agent*; or
- (c) a *firm* to which ■ IPRU-INV 13.1.5R(1) (Financial resource requirements for personal investment firms: requirement to hold professional indemnity insurance) applies.
- (d) [deleted]

(6) In relation to *home finance mediation activity* or *MCD article 3(1)(b) credit intermediation activity*, this chapter does not apply to an *authorised professional firm* which is not an *MCD credit intermediary*:

- (a) that is required by another *rule* to hold professional indemnity insurance (see *IPRU(INV) 2.3.1R*); and
- (b) whose *home finance mediation activity*, is incidental to its main business.

(7) In relation to *home finance mediation activity* or *MCD article 3(1)(b) credit intermediation activity*, this chapter does not apply to an *MCD credit intermediary* if it holds a comparable guarantee (as specified in (4)(b)(ii)) against liability arising from professional negligence.

[Note: article 29(2) of the *MCD*]

- (8) In relation to *MCD article 3(1)(b) credit intermediation activity*, only ■ MIPRU 3.2.9A R applies.

[Note: article 29(2)(a) of the *MCD*]

3.1.2 G The definition of *insurance distribution activity* is any of several activities 'in relation to a *contract of insurance*' which includes a contract of reinsurance. This chapter, therefore, applies to a reinsurance intermediary in the same way as it applies to any other *insurance intermediary*.

**Purpose**

3.1.3 G The purposes of this chapter are to:

- (1) reflect the *UK* provisions which implemented articles 10(4) and 10(5) of the *IDD* in so far as it required *insurance intermediaries* to hold professional indemnity insurance, or some other comparable guarantee, against any liability that might arise from professional negligence; and
- (2) meet the *statutory objectives* of consumer protection and protecting and enhancing the integrity of the *UK financial system* by ensuring that *firms* have adequate resources to protect themselves, and their *customers*, against losses arising from breaches in its duties under the *regulatory system* or civil law.

3.1.3A G

3.1.4 G Any breach in the duty of a *firm* or of its agents under the *regulatory system* or civil law can give rise to claims being made against the *firm*. Professional indemnity insurance has an important role to play in helping to finance such

claims. In so doing, this chapter amplifies *threshold condition 4* (Adequate resources). This *threshold condition* provides that a *firm* must have, on a continuing basis, resources that are, in the opinion of the *appropriate regulator*, adequate in relation to the *regulated activities* that the *firm* carries on.

3.1.5

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Under *Principles 3* and *4* a *firm* is required to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and to maintain adequate financial resources. Under *Principle 9* a *firm* is obliged to take reasonable care to ensure the suitability of its *advice on investments* and discretionary decisions for any *customer* who is entitled to rely upon its judgement.

3.1.5A

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3.1.6

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Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a *firm* faces in its day to day operations, including those arising from not meeting the legally required standard of care when *advising on investments*. The purpose of this chapter is to ensure that a *firm* has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks.



### 3.2 Professional indemnity insurance requirements

- 3.2.1 **R** A *firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section from:
- (1) an *insurance undertaking* authorised to transact professional indemnity insurance in the *UK*; or
  - (2) a *person* of equivalent status in:
    - (i) a *Zone A country*; or
    - (ii) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

[**Note:** articles 10(4) and 10(5) of the *IDD*]

- 3.2.2 **G** The minimum *limits of indemnity* for a *firm* whose *Part 4A permission* covers both *insurance distribution activity* and *home finance mediation activity* is the higher of the *limits of indemnity* for these activities. If the *firm* opts for a single comparable guarantee to finance the claims which might arise as a result of both activities, the requirements for *insurance distribution activity* apply.

- 3.2.3 **G** A non-*UK firm* (such as a captive insurance company outside the *UK*) will be able to provide professional indemnity insurance only if it is authorised to do so in one of the specified countries or territories.. The purpose of this provision is to balance the level of protection required for the *policyholder* against a reasonable level of flexibility for the *firm*.

#### Terms to be incorporated in the insurance

- 3.2.4 **R** The contract of professional indemnity insurance must incorporate terms which make provision for:
- (1) cover in respect of claims for which a *firm* may be liable as a result of the conduct of itself, its *employees* and its *appointed representatives* (acting within the scope of their appointment);
  - (2) the minimum *limits of indemnity* per year set out in this section;
  - (3) an excess as set out in this section;
  - (4) appropriate cover in respect of legal defence costs;

(5) continuous cover in respect of claims arising from work carried out from the date on which the *firm* was given *Part 4A permission* for the *insurance distribution activity* or *home finance mediation activity* concerned; and

(6) cover in respect of *Ombudsman* awards made against the *firm*.

3.2.5 **G** A *firm* is responsible for the conduct of all of its *employees*. The *firm's employees* include, but are not limited to, its *partners, directors*, individuals that are self-employed or operating under a contract hire agreement and any other individual that is employed in connection with its business.

3.2.6 **G** A *firm* is responsible for the conduct of all of its *appointed representatives*.

**Minimum limits of indemnity: insurance intermediary**

3.2.7 **R** If the *firm* is an *insurance intermediary*, then the minimum *limits of indemnity* per year are:

(1) for a single claim, €1,300,380; and

(2) in aggregate, the higher of:

(a) €1,924,560; and

(b) an amount equivalent to 10% of annual income (this amount being subject to a maximum of £30 million).

[Note: articles 10(4) and 10(5) of the *IDD*]

3.2.7A **G** [deleted]

3.2.8 **R** If a *policy* is denominated in any currency other than euros, a *firm* must take reasonable steps to ensure that the *limits of indemnity* are, when the *policy* is effected and at *renewal*, at least equivalent to those required.

**Minimum limits of indemnity: home finance intermediary that is not an MCD credit intermediary**

3.2.9 **R** If the *firm* is a *home finance intermediary* that is not subject to **MIPRU 3.2.9A R**, then the minimum *limit of indemnity* is the higher of 10% of *annual income* up to £1 million, and:

- (1) for a single claim, £100,000; or
- (2) in aggregate, £500,000.

**Minimum limits of indemnity: MCD credit intermediaries**

3.2.9A

**R**

If the *firm* is:

- (1) an *MCD article 3(1)(b) credit intermediary* who is not also an *MCD article 3(1)(b) creditor* carrying out direct sales only; or
- (2) a *home finance intermediary* that is:
  - (a) an *MCD mortgage adviser*; or
  - (b) an *MCD mortgage arranger*,  
who is not also an *MCD mortgage lender* carrying out direct sales only;

then the minimum *limit of indemnity* is that specified in ■ MIPRU 3.2.9BR.

[Note: article 29(2) of the *MCD*]

3.2.9B

**R**

The minimum monetary amount of the professional indemnity insurance or comparable guarantee is:

EUR 460 000 for each individual claim;

in aggregate EUR 750 000 per calendar year for all claims.

[Note: article 1 of the Commission Delegated Regulation (EU) No 1125/2014.]

**Excess**

3.2.10

**R**

In this chapter, "*client assets*" includes a *document* only if it has value, or is capable of having value, in itself (such as a bearer instrument).

3.2.11

**R**

For a *firm* which does not hold *client money* or other *client assets*, the excess must not be more than the higher of:

- (1) £2,500; and
- (2) 1.5% of *annual income*.

3.2.12

**R**

For a *firm* which holds *client money* or other *client assets*, the excess must not be more than the higher of:

- (1) £5,000; and
- (2) 3% of *annual income*.

**Policies covering more than one firm**

3.2.13

**R**

If a *policy* provides cover to more than one *firm*, then:

- (1) the *limits of indemnity* must be calculated on the combined *annual income* of all the *firms* named in the *policy*; and
- (2) each *firm* named in the *policy* must have the benefit of the relevant minimum *limits of indemnity*.

**Additional capital**

3.2.14

**R**

If a *firm* seeks to have an excess which is higher than the relevant limit, it must hold additional capital as calculated in accordance with the appropriate table below:

Table: Calculation of additional capital for firm not holding client money or other client assets (£000's)

Income	Excess obtained up to and including:														
	More than	Up to	2.5	5	10	15	20	25	30	40	50	75	100	150	200+
0	100	0	5	9	12	14	17	19	23	26	33	39	50	59	
100	200	0	7	12	16	19	22	25	30	34	43	51	64	75	
200	300	0	7	12	16	20	24	27	32	37	47	56	71	84	
300	400	0	0	12	16	21	24	28	34	39	50	60	77	91	
400	500	0	0	11	16	21	24	28	34	40	53	63	81	96	
500	600	0	0	10	16	20	24	28	35	41	54	65	84	100	
600	700	0	0	0	15	20	24	28	35	41	55	67	87	104	
700	800	0	0	0	14	19	24	28	35	42	56	68	89	107	
800	900	0	0	0	13	18	23	27	35	42	56	69	91	109	
900	1000	0	0	0	0	17	22	27	34	41	57	70	92	111	
1000	1500	0	0	0	0	0	21	26	34	41	57	71	97	118	
1500	2000	0	0	0	0	0	0	0	30	38	56	71	98	121	
2000	2500	0	0	0	0	0	0	0	24	33	53	69	99	126	
2500	3000	0	0	0	0	0	0	0	0	28	50	68	101	130	
3000	3500	0	0	0	0	0	0	0	0	0	47	67	101	132	
3500	4000	0	0	0	0	0	0	0	0	0	43	65	101	133	
4000	4500	0	0	0	0	0	0	0	0	0	39	62	101	134	
4500	5000	0	0	0	0	0	0	0	0	0	0	58	99	134	
5000	6000	0	0	0	0	0	0	0	0	0	0	54	97	133	
6000	7000	0	0	0	0	0	0	0	0	0	0	0	91	131	
7000	8000	0	0	0	0	0	0	0	0	0	0	0	84	126	
8000	9000	0	0	0	0	0	0	0	0	0	0	0	75	120	
9000	10000	0	0	0	0	0	0	0	0	0	0	0	0	113	
10000	100000	0	0	0	0	0	0	0	0	0	0	0	0	0	
100000	n/a	0	0	0	0	0	0	0	0	0	0	0	0	0	

Table: Calculation of additional capital for firm holding client money or other client assets (£000's)



Income		Excess obtained up to and including:											
More than	Up to	5	10	15	20	25	30	40	50	75	100	150	200+
0	100	0	4	7	9	12	14	18	21	28	34	45	54
100	200	0	7	11	14	17	20	25	29	38	46	59	70
200	300	0	7	11	14	17	20	25	30	40	49	64	77
300	400	0	0	9	13	16	19	25	30	40	50	67	81
400	500	0	0	0	11	14	18	24	29	40	51	68	83
500	600	0	0	0	8	12	15	22	28	40	51	69	85
600	700	0	0	0	0	9	13	20	26	39	50	69	86
700	800	0	0	0	0	6	10	17	24	38	49	69	87
800	900	0	0	0	0	0	7	15	22	36	48	69	87
900	1,000	0	0	0	0	0	0	12	19	34	47	68	87
1,000	1,500	0	0	0	0	0	0	0	16	32	45	67	86
1,500	2,000	0	0	0	0	0	0	0	0	18	34	59	81
2,000	2,500	0	0	0	0	0	0	0	0	0	19	48	71
2,500	3,000	0	0	0	0	0	0	0	0	0	6	37	64
3,000	3,500	0	0	0	0	0	0	0	0	0	0	26	55
3,500	4,000	0	0	0	0	0	0	0	0	0	0	14	45
4,000	4,500	0	0	0	0	0	0	0	0	0	0	1	33
4,500	5,000	0	0	0	0	0	0	0	0	0	0	0	21
5,000	6,000	0	0	0	0	0	0	0	0	0	0	0	8
6,000	7,000	0	0	0	0	0	0	0	0	0	0	0	0
7,000	8,000	0	0	0	0	0	0	0	0	0	0	0	0
8,000	9,000	0	0	0	0	0	0	0	0	0	0	0	0
9,000	10,000	0	0	0	0	0	0	0	0	0	0	0	0
10,000	100,000	0	0	0	0	0	0	0	0	0	0	0	0
100,000	n/a	0	0	0	0	0	0	0	0	0	0	0	0

3.2.15 **R** The *rule* on the items which are eligible to contribute to the capital resources of a *firm* applies (see ■ MIPRU 4.4.2 R).

