

Chapter 3

Professional indemnity insurance

3.1 Application and purpose

Application

3.1.1

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(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.

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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.