

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

		<div><div>(b) a <i>managing agent</i>; or</div><div>(c) a <i>firm</i> to which ■ IPRU-INV 13.1.5R(1) (Financial resource requirements for personal investment firms: requirement to hold professional indemnity insurance) applies.</div><div>(d) [deleted]</div></div> <div><div>(6) In relation to <i>home finance mediation activity</i> or <i>MCD article 3(1)(b) credit intermediation activity</i>, this chapter does not apply to an <i>authorised professional firm</i> which is not an <i>MCD credit intermediary</i>:<div><div>(a) that is required by another <i>rule</i> to hold professional indemnity insurance (see <i>IPRU(INV) 2.3.1R</i>); and</div><div>(b) whose <i>home finance mediation activity</i>, is incidental to its main business.</div></div></div><div><div>(7) In relation to <i>home finance mediation activity</i> or <i>MCD article 3(1)(b) credit intermediation activity</i>, this chapter does not apply to an <i>MCD credit intermediary</i> if it holds a comparable guarantee (as specified in (4)(b)(ii)) against liability arising from professional negligence.</div></div><div><div>[Note: article 29(2) of the <i>MCD</i>]</div></div><div><div>(8) In relation to <i>MCD article 3(1)(b) credit intermediation activity</i>, only ■ MIPRU 3.2.9A R applies.</div></div><div><div>[Note: article 29(2)(a) of the <i>MCD</i>]</div></div></div>
3.1.2	G	<div>The definition of <i>insurance distribution activity</i> is any of several activities 'in relation to a <i>contract of insurance</i>' which includes a contract of reinsurance. This chapter, therefore, applies to a reinsurance intermediary in the same way as it applies to any other <i>insurance intermediary</i>.</div>
3.1.3	G	<div><div>Purpose</div><div>The purposes of this chapter are to:</div><div><div>(1) reflect the <i>UK</i> provisions which implemented articles 10(4) and 10(5) of the <i>IDD</i> in so far as it required <i>insurance intermediaries</i> to hold professional indemnity insurance, or some other comparable guarantee, against any liability that might arise from professional negligence; and</div><div>(2) meet the <i>statutory objectives</i> of consumer protection and protecting and enhancing the integrity of the <i>UK financial system</i> by ensuring that <i>firms</i> have adequate resources to protect themselves, and their <i>customers</i>, against losses arising from breaches in its duties under the <i>regulatory system</i> or civil law.</div></div></div>
3.1.3A	G	
3.1.4	G	<div>Any breach in the duty of a <i>firm</i> or of its agents under the <i>regulatory system</i> or civil law can give rise to claims being made against the <i>firm</i>. Professional indemnity insurance has an important role to play in helping to finance such</div>

			<p>claims. In so doing, this chapter amplifies <i>threshold condition 4</i> (Adequate resources). This <i>threshold condition</i> provides that a <i>firm</i> must have, on a continuing basis, resources that are, in the opinion of the <i>appropriate regulator</i>, adequate in relation to the <i>regulated activities</i> that the <i>firm</i> carries on.</p>
3.1.5	G		<p>Under <i>Principles 3</i> and <i>4</i> a <i>firm</i> 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 <i>Principle 9</i> a <i>firm</i> is obliged to take reasonable care to ensure the suitability of its <i>advice on investments</i> and discretionary decisions for any <i>customer</i> who is entitled to rely upon its judgement.</p>
3.1.5A	G		
3.1.6	G		<p>Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a <i>firm</i> faces in its day to day operations, including those arising from not meeting the legally required standard of care when <i>advising on investments</i>. The purpose of this chapter is to ensure that a <i>firm</i> has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks.</p>