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Professional Indemnity Insurance Regulations

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The Institute of Chartered Accountants of Scotland

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Council, in terms of Rule 8, Rule 11.11.5 and Rule 12.4 of the ICAS Rules, hereby makes the following Regulations.

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1. General

Citation and commencement

- 1.1. These Regulations may be cited as the Professional Indemnity Insurance Regulations and shall come into force on 16 July 2021.

Definitions

- 1.2 In these Regulations, words and phrases have the same meaning as in the ICAS Rules, and, unless the context requires otherwise:

Authorised Insurer – an insurer who meets one of the following conditions:-

- (a) authorised by the Prudential Regulation Authority or the Central Bank of Ireland to carry on general insurance business in the *United Kingdom* or the Republic of Ireland, respectively;
- (b) authorised by a regulatory body equivalent to the Prudential Regulation Authority or the Central Bank of Ireland in an *EEA* member state (other than the Republic of Ireland and, where applicable, the United Kingdom), which is entitled to carry on general insurance business in the *United Kingdom* or the Republic of Ireland; or
- (c) in respect only of risks resulting from professional business carried out by *firms* in an *EEA* member state other than the *United Kingdom* or Republic of Ireland, authorised by a regulatory body equivalent to the Prudential Regulation Authority or Central Bank of Ireland in an *EEA* member state (other than the Republic of Ireland and, where applicable, the United Kingdom) to carry on general insurance business in that *EEA* member state, where such insurer is an affiliate or subsidiary of an authorised insurer in the *United Kingdom* or Republic of Ireland.

Assigned Risks Pool – the pool from which Firms and Members who are otherwise unable to obtain Professional Indemnity Insurance may do so for a limited period and to which all Participating Insurers shall subscribe.

Committee – the Committee established under Regulation 2.1 of the ICAS Public Practice Regulations.

Constructive Declinature – the quotation of terms of insurance, the economic effect of which is similar to the insurer declining to offer cover.

Difference in Conditions Endorsement – the endorsement which must be included in policy wordings, other than the Minimum Wording, issued by Participating Insurers.

EEA – the European Economic Area.

Firm – means (a) a Member engaged in Practice as a sole practitioner or with others as part of a partnership or body corporate; or (b) an individual, a partnership or a body corporate licensed, registered or authorised by ICAS to carry out Regulated Activities.

Gross Fee Income – all income of the Firm which is either (a) billed, including fees for personal appointments in respect of work covered by indemnity insurance; or (b) received from third parties as commissions or brokerage (whether or not offset by the Firm against its charges to the client), and which has been included in the profit and loss account of the Firm, but excludes the recovery of disbursements and expenses which do not form part of the chargeable fees for professional services rendered and, in either case, VAT; or (c) income received in respect of work sub-contracted to others.

Institutes – means ICAS, the Institute of Chartered Accountants in England and Wales, and Chartered Accountants, Ireland.

Joint Advisory Panel – the joint advisory panel appointed under Regulation 7.1.

Minimum Wording – the minimum approved policy wording of the Participating Insurer’s professional indemnity insurance policy.

Participating Insurer – an authorised insurer which has agreed to the terms and conditions described in Regulation 8.2.

Pool Manager – a person appointed from time to time by the Institutes to manage the Assigned Risks Pool.

Practice – has the meaning given to it in the ICAS Public Practice Regulations.

Practising Certificate – a certificate issued by ICAS to enable a Member to engage in Practice.

Principal – a sole practitioner, partner, director or member of a limited liability partnership, of a Firm.

Qualifying Insurance – insurance which (a) is underwritten by Participating Insurers; (b) includes retroactive cover for liabilities arising from work carried out in the previous six years, except for claims or potential claims known about at the time the insurance was first taken out; and (c) is underwritten in terms of the Minimum Wording approved by the Institutes. A policy wording which is not identical to the Minimum Wording must contain the Difference in Conditions Endorsement.

Regulated Activities – activities which are regulated by legislation and which ICAS is authorised to license and monitor by making regulations in terms of Rule 8.

United Kingdom – includes the Channel Islands and the Isle of Man.

Notices

- 1.3 Any notice or other document to be sent under these Regulations shall be delivered electronically, by hand or by post. It must be sent to the address that the Member, CA Student Member, Affiliate or Firm has given to ICAS for this purpose. Delivery shall be deemed to have occurred:
- 1.3.1 for emails, facsimile, and other electronic means when sent;
 - 1.3.2 by hand, when delivered; and
 - 1.3.3 by post 48 hours after posting.
- 1.4 Any reference to legislation, rules, regulations, schemes or other documents will apply to any re-enactment, re-issue or amendment.

2. Scope

- 2.1. These Regulations apply to:
- 2.1.1. a Member holding a Practising Certificate and resident in the United Kingdom or the Republic of Ireland;
 - 2.1.2. a Member, wherever resident, in Practice in the United Kingdom or Republic of Ireland;
 - 2.1.3. an individual, a partnership or a body corporate licensed, registered or authorised by ICAS to carry out Regulated Activities.
- 2.2. A Member falling within the scope of Regulation 2.1.1 or 2.1.2 shall also ensure that their Firm meets the requirements of these Regulations.

3. The Committee

- 3.1. The Committee is responsible for:
 - 3.1.1. reviewing the Qualifying Insurance criteria;
 - 3.1.2. monitoring compliance with these Regulations, and may exercise the powers of the Committee contained in the Public Practice Regulations in relation to any non-compliance;
 - 3.1.3. reporting non-compliance to any regulatory, disciplinary or other committee of ICAS;
 - 3.1.4. deciding the content of the annual confirmation of compliance with these Regulations (Regulation 5.1);
 - 3.1.5. approving the form and content of the contract for entry into the Assigned Risks Pool;
 - 3.1.6. ensuring the commissioning of investigations into Firms applying to be admitted to the Assigned Risks Pool (Regulation 9.9);
 - 3.1.7. making a referral to any regulatory, disciplinary or other committee of ICAS for that committee to take appropriate action following an investigation under Regulation 9.9;
 - 3.1.8. designating authorised insurers as Participating Insurers; and
 - 3.1.9. granting, at its absolute discretion, an exemption under Regulation 3.2.
- 3.2. The Committee may, in its absolute discretion, and in such terms as it decides:
 - 3.2.1. grant an exemption from the requirements of these Regulations to a Member who is a Principal in a practice which is regulated by another professional body and which has in place the level of professional indemnity insurance required by that body;
 - 3.2.2. waive or relax the requirements of Regulation 4.7 (level of excess);
 - 3.2.3. allow a Firm subject to these Regulations to combine with others to comply with these Regulations;
 - 3.2.4. waive or relax the requirements of these Regulations concerning Participating Insurers;
 - 3.2.5. grant an exemption from the requirements of these Regulations to a Member who is an employee in a Firm and who is holding a Practising Certificate only to meet the requirements of the Audit or Insolvency Permit Regulations and who is not engaged in Practice in another Firm or on their own account;
 - 3.2.6. grant an exemption from the requirements of these Regulations to a Member who holds a Practising Certificate but who is not engaged in Practice;
 - 3.2.7. grant an exemption from the requirements of Regulation 4.1.2 to an entity or individual if that entity is owned or the individual is employed by an entity that is not subject to these Regulations provided that other entity (the owner/employer) has, and agrees to maintain, other appropriate professional indemnity insurance; and
 - 3.2.8. grant an exemption from the requirements of Regulation 4.1.2 to an entity or individual if that entity or individual is resident in a country outside the United Kingdom or Republic of Ireland provided that the entity or individual is primarily in Practice outside the United Kingdom/Republic of Ireland and has other appropriate professional indemnity insurance that covers work undertaken in the United Kingdom/Republic of Ireland.

4. Requirement to take out Professional Indemnity Insurance

- 4.1. A Firm shall:
 - 4.1.1. take such steps as may reasonably be expected of it to ensure that it is able to meet claims against it arising from being in Practice; and
 - 4.1.2. arrange Qualifying Insurance which meets the limits specified in Regulations 4.2 to 4.4.

- 4.2 Subject to Regulation 4.3 and 4.4, the annual minimum limit of indemnity shall be £1.5 million for any one claim and in total.
- 4.3 Where the Firm's Gross Fee Income is less than £600,000, the annual minimum limit of indemnity for any one claim and in total shall be a sum equal to two and a half times its Gross Fee Income subject to a minimum level of £100,000.
- 4.4 For Firms licensed by ICAS under the Designated Professional Body arrangements and those authorised by the Financial Conduct Authority (or any relevant successor body) to conduct insurance mediation activities, the minimum limit of indemnity required for those activities must be equivalent to at least €1,120,200 for any one claim and €1,680,300 in total. This may form part of, or be in addition to, the minimum limit of indemnity required for the Firm's other activities under Regulations 4.2 and 4.3.
- 4.5 Gross Fee Income shall be based on the accounting year of the Firm which immediately precedes the start of the policy.
- 4.6 If the Committee is satisfied that a group (however composed) of Firms has shown that together they comply with these Regulations, it is at the Committee's discretion to allow that group to be treated as a single entity (compound firm) for the purposes of these Regulations.
- 4.7 The annual minimum limit of indemnity required under Regulations 4.2 to 4.4 can include a self-insured excess in the aggregate provided that the aggregate excess is no more than £30,000 multiplied by the number of Principals.

5. Confirmation of Professional Indemnity Insurance

- 5.1 A Firm shall annually confirm its compliance with the requirements of these Regulations at a time and in such a manner as may be prescribed by the Committee.

6. Practice Restructures and Cessation of Practice

- 6.1 Upon the amalgamation, merger, division or re-organisation of a Firm or Firms, it shall be the duty of the Principals in the affected Firm or Firms to ensure that the new Firm or Firms continue to comply with these Regulations. The terms and extent of any cover shall be equivalent to that provided by the affected Firms' previous Qualifying Insurance.
- 6.2 A Member who ceases to engage in Practice shall use their best endeavours to ensure that they are covered by arrangements which meet the requirements of Regulation 4.1 for a period of at least 24 months after they cease to practise.
- 6.3 When a Firm ceases to exist the Members in practice in that Firm at the date of cessation shall ensure that there is in place appropriate cover to meet requirements of Regulation 6.2 for a period of at least 24 months following the date of the cessation of the practice. Thereafter the Members that were in practice in that Firm shall use their best endeavours to ensure that cover is in place to meet the requirements of Regulation 6.2 for a further four years.

7. Joint Advisory Panel

- 7.1 The Joint Advisory Panel shall consist of two representatives from each of the Institutes, one of whom shall be nominated as Chair by joint agreement of the Presidents of the Institutes, and four representatives from the Participating Insurers. The quorum for meetings of the Joint Advisory Panel shall be four members, comprising two representatives of the Institutes and two Participating Insurers.

- 7.2. The Joint Advisory Panel shall meet at least twice a year in order to:
 - 7.2.1. review the progress, effectiveness and viability of the Participating Insurers scheme, including the Assigned Risks Pool;
 - 7.2.2. review matters referred to the Institutes by Firms;
 - 7.2.3. determine applications for admission to the Assigned Risks Pool;
 - 7.2.4. determine applications for extensions in particular cases to the maximum of two years in the Assigned Risks Pool; and
 - 7.2.5. deal with any other matters referred to the Joint Advisory Panel which require urgent response.
- 7.3. The Participating Insurers' representation on the Joint Advisory Panel shall be reviewed every three years, for recommendation to the Institutes.
- 7.4. In addition to the appointed four representatives from the Participating Insurers, a further two insurer representatives may attend meeting from time to time in an advisory capacity at the invitation of the Chair.

8. Approval of Insurers

- 8.1. The Institutes shall from time to time designate as Participating Insurers those insurers who meet and who continue to meet the qualifications for approval set out in Regulation 8.2.
- 8.2. An insurer may be accepted as a Participating Insurer if that insurer is authorised by the Prudential Regulation Authority (or any relevant successor body) in the United Kingdom or by the Central Bank of Ireland to carry on general insurance business in the United Kingdom or the Republic of Ireland respectively.

9. The Assigned Risks Pool

- 9.1. Where a Firm establishes to the satisfaction of the Joint Advisory Panel that it cannot obtain the professional indemnity insurance cover prescribed in these Regulations then the Firm concerned shall be eligible for admission to the Assigned Risks Pool. The cover to be provided in the Pool shall not extend to claims made or circumstances reported or known by the Firm prior to entry into the Pool.
- 9.2. The Joint Advisory Panel shall permit a Firm to be insured in the Assigned Risks Pool only in the following circumstances:
 - 9.2.1. where the Firm is able to demonstrate evidence of declinature in a form satisfactory to the Joint Advisory Panel; or
 - 9.2.2. where the Firm is able to demonstrate evidence of Constructive Declinature; or
 - 9.2.3. where the Firm is able to demonstrate that cover for run-off liability (maximum two years) is not available from any Participating Insurer.
- 9.3. A Firm which is unable to obtain a quotation from any Participating Insurers for a premium for the cover required under these Regulations other than a quotation which, in the opinion of the Joint Advisory Panel, amounts to Constructive Declinature may apply for admission to the Assigned Risks Pool.
- 9.4. The quotation of a premium which:
 - 9.4.1. the Firm is unable to pay within six months from the commencement of the policy; and/or
 - 9.4.2. so affects the Firm's financial security as to jeopardise its ability to carry on its business shall be prima facie evidence of Constructive Declinature.


- 9.5. Application for admission to the Assigned Risks Pool shall be made to the Pool Manager. An application shall include:
 - 9.5.1. evidence of declinature in a form satisfactory to the Joint Advisory Panel; or
 - 9.5.2. a declaration by the applicant of the circumstances it considers to be evidence of Constructive Declinature; or
 - 9.5.3. evidence that cover for run-off liability (maximum 2 years) is not available from any Participating Insurer.
- 9.6. The Firm's application for admission to the Assigned Risks Pool shall be referred by the Pool Manager to the Joint Advisory Panel. The Panel shall determine in its absolute discretion whether there has been Constructive Declinature (if applicable) and whether the Firm can enter the Assigned Risks Pool.
- 9.7. A Firm which has applied for admission to the Assigned Risks Pool on the basis that there has been Constructive Declinature shall be given short term admission to the Assigned Risks Pool pending the Joint Advisory Panel's determination of whether there has been Constructive Declinature.
- 9.8. Before admission to the Assigned Risks Pool, the Firm shall:
 - 9.8.1. supply the Pool Manager with any information it may reasonably require;
 - 9.8.2. agree to pay to the Pool Manager any required deposit and agree to pay the balance premium, as eventually assessed; in accordance with the timescales set out in the contract for entry.
 - 9.8.3. agree to submit, at the Firm's expense, to investigations as required by Regulation 9.9; and
 - 9.8.4. consent to the Pool Manager notifying the Committee of the Firm's application for admission to the Assigned Risks Pool and whether or not it was granted.
- 9.9. On admission to the Assigned Risks Pool a Firm shall submit, at its own expense, to an investigation by ICAS or its appointed agent and, if ICAS so decides, to an investigation at a later date. Payment of the anticipated costs of the investigation may be required in advance of the investigation, at ICAS's discretion. The investigation will determine the reasons why the Firm has been unable to obtain cover, and ascertain what steps, if any, should be taken to enable the Firm to obtain cover outside the Pool, and ICAS shall notify the Firm accordingly.
- 9.10. If, in the course of an investigation under Regulation 9.9, it appears to ICAS that the interests of the Firm's clients or the public may be prejudiced, ICAS shall initiate any action it considers necessary to prevent the Firm from carrying on in Practice, or to limit the extent to which the Firm may carry on in Practice.
- 9.11. No Firm can remain in the Assigned Risks Pool for more than 24 consecutive months without the express written consent of the Joint Advisory Panel.
- 9.12. An application for additional time in the Assigned Risks Pools shall be made to and determined by the Joint Advisory Panel which shall have absolute discretion in its determination. The decision of the Joint Advisory Panel in this respect shall be final and will be notified to the Committee.
- 9.13. A Member in Practice whose Firm has been unable to obtain professional indemnity insurance outside the Assigned Risks Pool on or before the expiration of the maximum time allowed in the Pool, including any extension allowed under Regulation 9.12, shall thereupon cease to be eligible to engage in Practice.



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