

## PROFESSIONAL INDEMNITY INSURANCE FAQ'S

### Common questions asked about professional indemnity insurance

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#### 1. Who is a professional?

Anyone who gives to another person advice and/or services of a skilful character according to an established discipline might be regarded as a 'Professional'. That means persons other than those in 'traditional' Professions, such as doctors and lawyers, are now considered to be Professionals i.e. Computer consultants, advertising agents, acoustics consultants, trade associations and fund managers.

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#### 2. Why does a professional need a professional indemnity policy?

A Professional will hold himself or herself out as having a special skill, which can be relied upon by another. Consequently the law requires that the Professional exercise the required skill to an appropriate level expected by that profession. Professionals are only human and mistakes do happen. Any financial loss, injury or damage arising from a mistake or failure by the Professional to exercise the required level of skill may mean that an award is made in favour of a person who suffers a loss, damage or injury. A Professional may also be held to be liable for a mistake even though there was no negligence.

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#### 3. What protection will a professional indemnity policy provide?

A Professional Indemnity policy aims to shield the Professional's assets in the event of a claim therefore ensuring that he/she is able to carry on their business. Every policy on the market is different. You need to compare each policy.

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#### 4. What is a 'claims made and notified' policy? How does it differ from an 'occurrence' policy?

A 'claims made and notified' policy requires all claims and any fact, situation or circumstance that results in a claim, to be notified to the Insurer within the Period of Insurance. The actual mistake could occur at any time, if there is retrospective cover, or otherwise it must occur during the Period of Insurance. The Insured must not have had any prior knowledge of the fact, situation or circumstance before the Period of Insurance. In an "occurrence" wording (as for Public Liability policy wordings), the circumstance must occur during the Period of Insurance whilst the notification of this event can occur at any time subsequently.

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### **5. What fact, situation or circumstance should I notify to an insurer?**

Any fact, situation or circumstance, which a reasonable person in the Insured's professional position would have thought, might result in someone making a claim against him/her.

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### **6. What does a civil liability professional indemnity wording cover?**

A 'civil liability' wording will indemnify the Insured for claims arising from any civil award imposed by a civil court, as opposed to criminal liability or penalties enforced by a criminal court. A Civil Liability Professional Indemnity wording is broader than a 'negligence wording', as it will indemnify the Insured for claims arising from strict liability, where no negligence is involved.

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### **7. Why do I have to fill out a proposal form?**

Generally before a quote can be given for Professional Indemnity Insurance, underwriters will require certain information in order to understand the Insured's profession and all the characteristics of the Insured's business. The information provided in the proposal either forms part, or all, of the information that an underwriter will rely upon to provide a quote. Generally each Insured is quoted individually, since one Insured's circumstances (i.e. the type of profession, type of work performed, number of years in the profession and experience) may vary considerably from another.

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### **8. What does 'costs inclusive' excess and 'costs exclusive' excess mean?**

Costs Inclusive Excess means the Insured must pay the amount of the Excess towards the legal and defence costs. Costs Exclusive Excess means the Insured does not pay any excess towards the legal and defence costs but only pays the amount of the Excess towards the settlement of any Claim.

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### **9. What is the retroactive date? What is the date of inception?**

Retroactive date is the date after which acts, errors or omissions of the Insured are covered. That is, any act, error or omission arising from work done after the Retroactive date will be covered under the Policy. The Inception date is the date of the start of the Policy Period.

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#### **10. What is run off cover? How many years should I take out run off cover for?**

If an Insured chooses to sell his/her business and retire, then 'Run Off' cover will indemnify them for any unknown claims arising during the Period of Run Off Insurance, arising from mistakes made whilst they were still in business. It does depend upon the Retroactive date offered with the policy. It is difficult to suggest the length of time that 'Run Off' cover ought to be taken out, as it depends upon the Statute of Limitations legislation applying to that particular claim. In some cases a claim can be brought in excess of 15 years after the mistake occurred.

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#### **11. What is continuous cover? When do we offer this cover?**

This is, in effect, a loyalty bonus. It means that if someone who was insured with us in unbroken successive periods notifies a claim circumstance in the subsequent period which should have been notified in the earlier period, then that claim will be covered under the latter policy but subject to the lesser limit of the two applicable policies. Issues of 'non-disclosure' and 'known circumstances' exclusions will not be raised, however prejudice due to delayed notification may be taken into account in the adjustment of the claim.

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#### **12. What is automatic reinstatement?**

Unlike other forms of liability policy, the sum insured of the professional indemnity policy is limited so that the limit applies to the aggregate of all claims against the policy in the policy period. The automatic reinstatement allows this aggregate limit to be doubled while the limit for any one claim remains the limit of the sum insured.

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#### **13. What is meant by a 'known circumstance'?**

Claims arising after the policy inception which arise from circumstances which the Insured knew (or should have known) at the time of the policy inception may give rise to a claim, are excluded. This is because such claims are not fortuitous at the time of entering into the insurance but, on the contrary there is a real possibility that a claim may eventuate.

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#### **14. What is the difference between jurisdiction and territorial limits?**

These two terms are sometimes confused. Territorial Limit refers to the place where the act, error or omission occurs. Jurisdiction Limit refers to the fact that the policy will only cover claims brought within the court system of the nominated countries.