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Professional Indemnity Insurance: CIMA releases Statement of Guidance

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Introduction

On August 29, 2016, the Cayman Islands Monetary Authority (**CIMA**) released a Statement of Guidance on Professional Indemnity Insurance for Trust, Insurance, Mutual Fund Administrator, Securities Investment Business and Company Management Licensees and Directors. Statements of Guidance (**SOGs**) contain recommendations on how licensees should operate and represent a measure against which CIMA will assess compliance by licensees. This particular SOG sets out the minimum criteria that certain entities licensed by CIMA should follow for obtaining and maintaining professional indemnity (**PI**) insurance. Prior to finalising this SOG, CIMA consulted with the private sector and has published its feedback from the consultation process.

The SOG states that the purpose of PI insurance is to protect professional individuals and businesses that provide advisory and other services from legal costs and claims by third parties for damages arising from acts, omissions or breaches of professional duty. CIMA has stated that the components in the SOG are reflective of international best practice, whilst maintaining applicability to the specific regulatory needs of the Cayman Islands.

Scope

The SOG applies to the following types of entities licensed by CIMA (Licensees):

- Trust Companies licensed under the Banks and Trust Companies Law
- Insurance Brokers, Insurance Managers and Insurance Agents licensed under the Insurance Law

- Mutual Fund Administrators licensed under the Mutual Funds Law
- Securities Investment Businesses licensed under the Securities Investment Business Law
- Corporate Services Providers and Company Managers licensed under the Companies Management Law
- Corporate and Professional Directors licensed under the Directors Registration and Licensing Law

Other Cayman laws relating to PI insurance coverage take precedence over the SOG, particularly those that relate to the amount of cover. However, the current limit stipulations contained in those other Cayman laws are minimum coverage requirements only and CIMA expects that Licensees will conduct comprehensive PI insurance adequacy assessments in line with the SOG.

Key Features of the SOG

Sufficiency of PI Insurance Coverage

The SOG states that Licensees should at all times maintain adequate PI insurance and, where practicable, it should be provided by an insurer that is licensed in Cayman. CIMA also states in the SOG what it considers adequate in terms of the financial strength of the insurance provider (see below). The SOG should be implemented in proportion to the Licensee's size, nature and complexity of its business, following a risk assessment of possible loss exposures on an individual client and aggregate basis. Accordingly, there is an acknowledgement that a "one size fits all" approach is not appropriate and that the PI insurance expectations may differ as between Licensees.

PI insurance should cover claims affecting the Licensee, its current or former officers and employees and third party agents, service providers or consultants who previously or currently work for the Licensee. (Alternatively, Licensees should ensure that such third party agents, service providers or consultants obtain their own adequate PI insurance cover.)

The SOG includes a non-exhaustive list of factors that should be considered in determining PI insurance adequacy, including:

- Volume of business transacted
- Number and type of clients
- Worst loss scenario per individual client
- Potential for multiple claims
- Number of authorised representatives and/or employees
- Proposed policy insurer definitions for limits, excesses and any other important

conditions or coverage

- Any impending or past legal actions (including suffered losses)
- The potential financial exposures which may arise from gaps in coverage (and establish a risk framework to manage those risks)

The SOG notes that the limit and excess of PI insurance cover are fundamental items of consideration, but not the only important items, and continues by listing some factors for determining both an adequate limit of liability and a determination of excess.

Minimum Expectations for PI Insurance Cover

The SOG provides, as a general expectation, a list of minimum features for a Licensee's PI insurance cover, including:

- Amount of cover (limit)
- Excess/deductibles
- Scope of indemnification
- Exclusions
- Persons covered
- Automatic reinstatement
- Legal costs
- Fraud/dishonesty/infidelity
- Retroactive cover
- Run-off cover

Licensees should maintain records of how their determinations of adequacy of PI insurance coverage are made and should review the adequacy of coverage regularly, at least every two years.

Financial Strength of Insurance Providers

Licensees should select insurers based on their financial strength and, where available, ratings by A.M. Best, Fitch, Moody's or Standard & Poor's, should be used. The SOG states that the minimum rating should be an A.M. Best rating of B+ or its equivalent and Licensees should monitor and review their insurer's financial strength at least upon each renewal.

Certificates of PI Insurance

The SOG sets out guidelines for the content of PI insurance certificates, including the amount of coverage, the expiration date and any exclusions and/or limitations.

Other Appropriate Arrangements for PI Insurance

Licensees are permitted by the SOG to use appropriate alternative arrangements to PI insurance. If such alternative arrangements are being utilised, the Licensee should seek the written approval of CIMA for such arrangements. CIMA will only approve alternative arrangements that are equivalent to the protection provided by adequate PI insurance coverage. The SOG does not include an exhaustive list of alternative arrangements but lists by way of example: group coverage, commitment by parent, guarantee, own funds, cash reserves, self-insurance or industry member funds. CIMA has also indicated that the existence of directors' and officers' liability insurance may be considered alternative arrangements to PI insurance for those individuals. The SOG also lists issues that should be addressed in requests for approval of alternative arrangements.

Notification Requirements

The SOG provides that Licensees should confirm annually to CIMA that PI insurance or other appropriate arrangements exist and sets out a list of items that should be included in the confirmation. Licensees should notify CIMA in writing if:

- during the term of a policy or other appropriate arrangement, the Licensee commences a new business line for which it does not already have PI insurance cover;
- PI insurance or other appropriate arrangements cannot be obtained within 28 days of a renewal date; or
- PI insurance or other appropriate arrangements are cancelled.

A copy of the SOG can be obtained from the CIMA website or by clicking here.

This client briefing is intended to provide a general summary of the position in law as at the date shown above, and is not to be taken as specific legal advice applicable to particular issues or circumstances. If such advice is required, please contact your usual Ogier contact or one of our partners listed here.

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Regulatory information can be found under Legal Notice

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