

Further changes to Irish Minimum Terms for Solicitors Professional Indemnity Insurance

By Stephen Chessher

Last month I wrote about changes to the Irish Minimum Terms to be introduced from renewal on 1 December 2009.

Following those changes, further discussions were held between the Law Society and Professional Indemnity Insurers with a view to making the market for Solicitors Professional Indemnity Insurance more attractive for existing and potential new entrants. The background to those discussions were the concerns by the Law Society that, notwithstanding the changes it had already agreed to the Minimum Terms, premium rates would simply be unaffordable for many firms without a further relaxation of the Minimum Terms. A further factor has been the continuing uncertainty surrounding the Solicitors Mutual Defence Fund and whether it will be in a position to offer insurance come next renewal.

The outcome of these deliberations has been further changes which have been incorporated in the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) (Number 2) Regulations 2009.

There are four major changes:

1. The Assigned Risks Pool is suspended. The ARP is currently suspended only for 2009-2010 but subject to further review. Whether this is the end of the ARP remains to be seen.

Insurers will raise two cheers for the temporary demise of the ARP. The effect on the profession is likely to be that some firms will be forced out of business which may, paradoxically, result in claims which would have otherwise been made against the ARP being made under the former firms run-off cover. This might perhaps seem a pyrrhic victory for insurers.

2. Insurers will be entitled to cancel run-off cover for non payment of the premium.
3. The period of mandatory run-off cover is to be reduced from 6 years to 2 years.

The declared intent of this change is to make it easier for sole principals wishing to retire to do so. Whilst practitioners may initially welcome the change, they may be less enamoured if claims are made more than 2 years after cessation of practice leaving their personal assets exposed in retirement.

4. Insurers will be able to exclude liability for claims made by Financial Institutions where there has been *material* misrepresentation on disclosure other than *innocent* misrepresentation or *non-disclosure*. The changes on which I commented in my last article allowed insurers to exclude liability for claims made by Financial Institutions where there had been *fraudulent* misrepresentation or non-disclosure. So the insurers entitlement to exclude liability for non-disclosure will increase but perhaps not significantly so. In future there will be a two fold test for misrepresentation or non-disclosure: materiality and intention. The burden of proof will be on the insurer to show that the misrepresentation or non-disclosure was both material and other than innocent.

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As renewal on 1 December looms ominously closer, solicitors will be anxiously hoping that these late changes will bring some stability to the market for professional indemnity insurance and rates that are less than ruinous.

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