New rules imposing requirement for minimum professional indemnity insurance for credit intermediaries

Recent legislation enacted by the European institutions in relation to the regulation of credit intermediaries has now imposed a minimum level of Professional Indemnity Insurance (PII) for credit intermediaries in the EU. The legislation also provides that this minimum level of PII is to be kept under review and increased if necessary.

Background

EU Directive 2014/17 dated 4 February 2014 introduces wide ranging changes in relation to Credit Agreements for Consumers relating to residential and moveable property. It is colloquially known as the “Mortgage Credit Directive”. It aims to ensure that all consumers that purchase a property or take out a loan secured against their home are adequately informed and protected against the risks. It covers a myriad of areas including:

- financial education
- conditions applicable to credit intermediaries and appointed representatives
- advertising and marketing by credit intermediaries
- pre-contractual information, credit worthiness and suitability assessments
- rules in relation to foreign currency loans and variable rate loans
- information concerning changes in borrowing rates
- arrears and foreclosure

Article 29(2)(a) Minimum Professional Requirements

Article 29(2)(a) provides that Member States are required to ensure that the admission of credit intermediaries is made subject to meeting certain professional requirements. This includes the holding of a certain level of PII

Key facts:

- A minimum level of Professional Indemnity Insurance (PII) for credit intermediaries in the EU has been imposed.
- Directive aims to ensure that all consumers that purchase a property or take out a loan secured against their home are adequately informed and protected against the risks.
- Amount which has been stipulated to start with is a sum of €460,000 for each individual claim and an aggregate of €750,000 per calendar year for all claims.
- Professionals to whom this requirement will apply will include estate agents, insurance brokers, mortgage brokers and surveyors.
covering the territories in which the credit intermediary offers services. They also have the option of showing that they have some other comparable guarantee arising from professional negligence. For tied credit intermediaries, Member States can provide that such insurance or comparable guarantee can be provided by a creditor for which the credit intermediary is empowered to act.

Under the Directive the European Commission has been given the power to adopt and amend Regulatory Technical Standards (RTS) to stipulate the minimum monetary amount of the PII or comparable guarantee. These minimum monetary amounts are to be reviewed every two years from March 2018 onwards.

What is a Credit Intermediary?

A credit intermediary is defined as

"a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a Creditor or a Credit Intermediary and who, in the course of his trade, business or profession, for remuneration, (which may take a pecuniary form) or any other agreed form of financial consideration

(a) presents or offers credit agreements to consumers
(b) assists consumers by undertaking preparatory or other pre contractual administration in respect of credit agreements other than as referred to in point (a) or
(c) or concludes credit agreements with consumers on behalf of the creditor”.

What is a tied Credit Intermediary?

A tied Credit Intermediary means

“any credit intermediary who acts on behalf of or under the full and unconditional responsibility of

(a) only one creditor
(b) only one group
(c) a number of creditors or groups which does not represent the majority of the market”.
Minimum Monetary Amounts

EU Regulation 1125 of 2014 (which came into force on 13 November 2014) imposes RTS in respect of the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries. The manner in which this was done was to specify a minimum amount per claim and per year.

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Conclusion

By March 2016 all credit intermediaries must have in place a minimum level of PII or a comparable guarantee. This minimum level of PII is to be reviewed by each member state every 2 years to assess its adequacy. The purpose of this requirement is to give consumers an adequate level of protection in respect of credit agreements into which they are entering where such agreement relate to the purchase or financing of immovable property. The sort of professionals to whom this requirement will apply will include estate agents, insurance brokers, mortgage brokers and surveyors, all of whom will have to assess the adequacy of their current level of PII in good time in advance of March 2016.

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