Solicitors’ Professional Indemnity Insurance Minimum Terms
Re-Introduction of Assigned Risks Pool

By Stephen Chessher and Sean Carr

Last year the Assigned Risks Pool (which serves as an insurer of last resort for solicitors unable to obtain professional indemnity insurance on the open market) was suspended. The intention at the time was to make the market more attractive for existing insurers and potential new entrants.

Following discussions between the Law Society and insurers, the Assigned Risks Pool (‘ARP’) is to be reinstated in slightly restricted form as from 1 December 2010.

Solicitors Acts, 1954 to 2001 (Professional Indemnity Insurance) (Amendment) Regulations 2010

On 5 October the Council of the Law Society approved the new Regulations reinstating the ARP.

The main features are:

1. Liability of the ARP for Claims in respect of any one Firm in any one Indemnity Period will be limited to €1.5m in aggregate. ARP Defence costs remain unlimited but may be reduced proportionately if the amount insured is inadequate.

2. Claims made by Financial Institutions will not be covered. ‘Financial Institutions’ include NAMA.

3. The previously planned ARP levy will not be introduced. The ARP premium payable will be calculated in accordance with a premium schedule determined by the PII Committee.

4. A firm will have 60 days from 1 December 2010 to apply to enter the ARP. A firm cannot apply for entry if it failed to obtain qualifying insurance during the period of suspension 2009-10 (unless it can show that it ceased to practice and obtained run-of-cover during that period).

5. The ARP will have the same limited rights to cancel run-off cover (for non-payment of premium) as do qualifying insurers.

Provision of information and co-operation with qualifying insurers

Finally, the new Regulations impose a positive duty on solicitors to co-operate with their insurers. If an insurer considers that a solicitor has failed to co-operate, the insurer may notify the Law Society which may in turn take disciplinary action against the solicitor if it considers it appropriate.

Presumably in recognition of the fact that failure to pay stamp duty has been a particular source of claims, insurers will also be specifically entitled to report to the Law Society such a failure and again the Law Society will be entitled to take disciplinary action against the solicitor if it considers it appropriate.
Conclusion

The Law Society has attempted to balance the interests of those solicitors who are unable to obtain professional indemnity insurance on the open market with the well-known dislike of insurers for the ARP. The risk of reinstating the ARP in any form was that it might deter new insurers from entering the market or result in existing insurers leaving the market to the detriment of solicitors generally.

It remains to be seen whether this will happen.

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