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Changes to Accountants' Indemnity Insurance - what goes round comes around?

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In May 2017, various changes were made to the ICEAW's Professional Indemnity Insurance Regulations and in particular, the minimum approved wording. These changes affect accountants' insurance policies that incept or renew on or after 1 May 2017.

We consider two changes below that have been introduced to protect insured firms and, more specifically, their clients, namely:

- The introduction of a requirement that insurers must offer 2 years of run-off cover to accountants who cease trading; and
- Changes to how insurers must handle breaches of policy conditions.

Run-off Cover

Perhaps understandably, some insurers are reluctant to provide run-off cover to accountants for the period of time after they cease trading. It is, after all, common for firms to face claims around the time that they close their doors because it is then that claimants become concerned that there will be no viable entity to meet any potential claim.

Under the new regulations, the insurers on risk at the date a practice ceases trading will be obliged to provide run-off cover for a minimum of 2 years from the date of cessation. The provision of run-off cover is conditional on payment of an additional premium. It remains to be seen whether the price that insurers seek to charge for run-off cover is affordable to those wishing to close down their practices.

Prejudice

The second change relates to how the minimum terms deal with prejudice caused to an insurer where an accountant has not complied with a condition of its professional liability insurance policy.

Currently, when an insured accountant has not complied with a condition of the policy, insurers are generally able to reduce the indemnity to such sum as, in their reasonable opinion, would have been payable in the absence of such prejudice.

This issue arises most commonly in the case of late notice where a firm, in breach of the notification provision, has handled a claim itself for a period of time before notifying its insurer. In that instance, under the old rules, insurers could reduce the indemnity provided to the insured firm to take into account such prejudice. Often, the practical effect would be that any such reduction would be explained to the claimant who would face reducing its claim unless it was prepared to pursue the partners/members of the firm personally with the risk that they may have no funds available to pursue.

The position has been amended to provide greater protection to the consumer. Now the minimum wording expressly requires insurers to meet the whole claim (whether as a result of a settlement or a judgment) and then seek reimbursement from the insured firm to the extent that insurers have suffered any prejudice. In other words, insurers will have to pay the claim in full, regardless of the prejudice they have suffered through late notification, and then seek to recover the difference from the firm afterwards. The practical effect may be higher settlements leaving insurers in the position of needing to decide whether to pursue their own insured for the difference.

Comment

The changes introduced in May aim to provide increased protection for both the accountancy industry and the clients they serve. It remains to be seen whether either change favours the profession which may see increasing premiums or insurers being more selective about the entities they cover. Experience tells us that "swings" introduced by professional bodies are often countered in due course by the "roundabouts" of the insurance market.

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