

CIB-GN(1)

(Issued on 7 March 2007)

(Revised on 10 June 2009)

Guidance Note on Annual Certification for Adequate Professional Indemnity Insurance

According to Membership Regulation 3.5, the General Committee is issuing this Guidance Note on Annual Certification for Adequate Professional Indemnity Insurance.

Background

CIB Membership Regulation 5.2 requires our Members to maintain Professional Indemnity Insurance (“PII”) with a minimum limit of indemnity determined with reference to their insurance brokerage income relating to **the 12 months immediately preceding the date of commencement of the PII policy**. Compliance audit in this regard has been carried out in two ways: (1) the annual audit conducted by Members’ own auditors and their reporting to CIB within the six-month period after each Member’s financial year end; (2) the on-site visits by CIB Secretariat to individual Members. It has come to our notice that in some cases the levels of the PII have not been calculated in accordance with the Membership Regulations and such covers were inadequate.

Common Fallacies

The common fallacies we have noticed are:

1. Brokers using the net insurance brokerage income

There are Members who have wrongly used the insurance brokerage income net of their brokerage/commission paid to their Technical Representatives as the brokerage income for taking out the PII policy.

“Insurance Brokerage Income” in the Membership Regulations refers to that of the Member as a corporate insurance broker has received. Hence the gross income of the Member from insurance brokerage should be used for determining the limit of indemnity of the PII policy.

2. Brokers excluding insurance brokerage income from Linked Long Term Insurance Business

Some Members have wrongly interpreted that brokerage or fee income earned from Linked Long Term Insurance Business does not fall within the definition of “Insurance Brokerage Income”.

Members’ attention is particularly drawn to the phrase “any contract which contains an element of insurance, irrespective of the extent of such insurance element” in the definition of “Insurance Brokerage Income”, that their income from selling Investment-linked Life Insurance should be included when deciding the level of indemnity of the PII policy.

3. Brokers using the insurance brokerage income of the last financial year

There are Members who have incorrectly used the insurance brokerage income of their last financial year for calculating the limit of indemnity of the PII.

The relevant period should be “**the 12 months immediately preceding the date of commencement of the professional indemnity insurance cover**” as required in both CIB Membership Regulations and the IA’s Minimum Requirements.

Methodology for Penalty Recommendation

Breach of the PII requirement by a Member will result in a recommendation to the Disciplinary Committee that the Member be fined at an amount to be determined with reference to the gravity and duration of the shortfall, subject to a minimum of HK\$10,000. Shortfall means the difference between the required limit of indemnity of the PII and the one that has actually been taken out for the PII. In case of non-insurance, the shortfall is equivalent to the required limit of indemnity.

60-day Window for Rectification

Since the requirement asks that Members are to determine the limit of indemnity based upon the 12-months’ brokerage income preceding immediately before the date of policy commencement, and due to the fact that Members have to start negotiating the cover with underwriters in advance, most Members have to estimate part of the brokerage income when determining the limit of indemnity. In case of any unexpected upsurge in business towards the end of the said 12-month period, a Member may be technically in breach of the Regulation when the renewed PII policy commences.

In view of this, a 60-day Window is allowed that when a Member has rectified any shortfall in the limit of indemnity within the first 60 calendar days of the commencement of the renewed professional indemnity insurance, the Confederation will not instigate disciplinary investigation into that matter.

To avoid any doubt,

- (a) when the shortfall is not rectified within the window, the penalty recommendation will take these 60 days into account; and
- (b) this Window is not applicable to cases of non-insurance.

Hints of Due Compliance

(1) Selection of the Policy Commencement Date

A policy commencement date that falls in the midst of a month would effectively mean that the Member has to keep daily record of insurance brokerage income for that particular month in order to determine the required limit of indemnity for the next policy year and to assess its adequacy. It may be wise to pick the first day of a month as the commencement date of the cover. Members may even consider aligning the policy year with their own financial year.

(2) Classification of Income in the Books and Accounts

The insurance brokerage income is the key factor in determining the limit of indemnity of the PII cover. When a Member is also engaged in other business besides that of insurance broker but does not maintain separate records of various income sources, the information about its insurance brokerage income would be difficult for retrieval or be easily distorted. It will be wise to classify income for different sources and be recorded as such in the books and accounts.

(3) Timely Book-keeping and Review of the Cover

Given the 60-day Window for rectification, it is advisable for Members to keep their books and account up-to-date, and to set an earlier date for review of the limit after its commencement.

The Annual Certification Requirement

Whilst we rely upon Members to apply stringent internal control measures to manage the due compliance in this regard, we are obliged to introduce at this juncture an Annual Certification requirement that Chief Executives of Members are to certify compliance by using the appended form prescribed by the General Committee:

QUOTE

Compliance with the PII Requirement

This is to certify that we have maintained and shall ensure the maintenance of the professional indemnity insurance in accordance with the CIB Membership Regulations which have specified that:-

- The minimum limit of indemnity shall be (a) a sum equal to (i) two times the aggregate insurance brokerage income relating to the 12 months immediately preceding the date of commencement of the professional indemnity insurance cover (applicable to a Member who has been in business for more than one year); or (ii) two times the projected insurance brokerage income for the first 12 months of the period of the professional indemnity insurance cover (applicable to a Member who has been in business for less than one year), (as the case may be); or (b) a sum of HK\$3,000,000, whichever sum shall be greater up to a maximum requirement of HK\$75,000,000, and
- "Insurance Brokerage Income" means brokerage or fee income derived from advising on or arranging any contract which contains an element of insurance, irrespective of the extent of such insurance element.

Note 1: Breach of the PII requirement by a Member will result in a recommendation to the Disciplinary Committee that the Member be fined as per the Guidance Note on Annual Certification for Adequate Professional Indemnity Insurance.

Note 2: That failure to maintain adequate insurance and/or certification that adequate insurance was effective during a period when it was not will be considered grounds for a Disciplinary Action as to whether the Chief Executive is considered to be fit and proper person and his continued eligibility to remain registered with CIB.

Note 3: This certification requirement is in addition to the annual audit and reporting by the Members' own auditors. Members remain obligated to engage their auditor to conduct the compliance audit and to submit the auditors' Compliance Report within the six months after each financial year end.

Signature of Chief Executive

Name in print

Date

UNQUOTE

This form of Annual Certification will be sent to Members with the debit note for membership subscription. It shall be signed by Chief Executives of Members and be filed with CIB together with payment of membership subscription due on 1 April each year.

Non-submission of this form as prescribed by the General Committee when it is due on 1 April each year or misrepresentation in the form will be a conduct by both the Member and the Chief Executive of the Member that may be injurious to the character and interests or prejudicial to the objects of CIB. The matter will be referred to the Disciplinary Committee for investigation into the fitness and propriety of both the Member and the Chief Executive.

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