

ERRORS & OMISSIONS INSURANCE POLICY

PROSPECTUS

Why does someone performing Professional Services or Consulting Activities require a Errors & Omissions / Professional Indemnity Insurance Cover?

Professionals hold out as having special skills. The duty of care requires a Professional to exercise a reasonable degree of care when performing professional services. The standard of care is the benchmark against which the Professional's conduct is judged. A Professional needs to buy Insurance as it is becoming common to look to the professional for recovery when the professional's performance falls below the clients' expectations. Professional liability disputes can cause:

1. Costly litigation
2. Time-consuming distraction from business
3. Damages to reputation

Professional standard of care:

The professional due to his or her superior knowledge and skill, must act with the degree of care of a member of his or her profession, with similar skills and in similar circumstances. This would imply that they need to exercise the highest level of care in their professional work failing which they can be sued for negligence, errors & omissions.

How is the Professional standard of care defined?

- Statutes and regulations (requirements by law)
- Codes of professional conduct and ethics (model of standards related to confidentiality, conflict of interest, professional behaviour)

Who should purchase this Policy?

This policy is suitable for small & medium providers (individuals & firms) of Professional Services and offers a wide coverage at reasonable cost. Major Classes of Professionals for whom this Policy is suitable are listed below:

- Chartered Accountants / Certified Financial Planners / Tax planners
- Lawyers / Legal Firms
- Draughtsman / Interior Decorators
- Miscellaneous Professionals involved in advertising, marketing, financial planning, training, travel, recruitment, event planning, etc.
- Any other individual or firm providing any type of consultancy or advice for a fee

Details of the Coverage afforded are given below

What does this Policy Cover?

Errors & Omissions Insurance Policies (also often also referred to as *Professional Indemnity Insurance Policies*) provide professionals with indemnity towards their liability to aggrieved Third Parties.

The Policy thus covers the Insured Professional's / Firm's legal liability for any allegedly wrongful act, error or omission committed by them in course of their providing professional services or advice for a fee. Such a legal liability is usually decided by a Civil Court of Competent Jurisdiction in India. Since the costs to defend such claims can entail significant legal costs & expenses, this policy also provides a reimbursement for such costs & expenses subject to the limits, terms & conditions stated in the Policy itself.

The practice is to issue these policies on an "All Risks" basis, meaning that they are driven only by exclusions (anything not excluded will be covered). The exclusions are listed below.

Add-ons

1. Emergency Defence Costs
2. Loss of Documents
3. Contractual Liability Extension
4. Sub-Contractors and Agents Extension
5. Run Off Cover for Insured Entity
6. Court Attendance Costs Extension
7. Fraud And Dishonesty Extension
8. Principal's Previous Business Extension
9. Past subsidiary company Extension
10. Public Relations Expenses Extension
11. Automatic Reinstatement Extension
12. Fines & Penalties Extension
13. Breach of Privacy Extension
14. Intellectual property
15. Newly Acquired or Created Subsidiaries
16. Worldwide (excluding USA and Canada) Territory and Jurisdiction Extension Clause
17. USA & Canada Territory and Jurisdiction Extension Clause
18. Inquiries Attendance Costs Extension

Clauses

1. Continuous Cover
2. Claims preparation costs
3. Libel, Slander and/or Defamation
4. Joint ventures

What period can this Policy be purchased for?

Such policies generally have a tenure of 1 year and can be renewed on the same or revised terms based upon the requirements of the Insured Professional / Firm. Shorter periods for less than a year can be purchased for specific requirements at premiums specially designated for such shorter periods.

All policies come with an automatic extended reporting period of 60 days (for any claims which might not have been reported before the expiry of the Policy) if the policy does not get renewed

What should be the Sum Insured under this Policy?

The Sum Insured (referred to as the Limit of Indemnity) can be provided based on the specific requirements of the Insured Professional. No lower or upper limits are mandated. Most small to medium professionals / Firms purchase limits of liability ranging from Rs 25 lakhs to Rs 5 crores applicable either for each claim & in the aggregate for all claims during the Policy Period.

What are the exclusions under this Policy?

1. Prior and pending

Any claim made against or in any way intimated to You prior to the commencement of the period of insurance or directly or indirectly arising from or attributable to:

- i. any facts or circumstances of which You were aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the period of insurance;
- ii. any facts or circumstances reported to Us or any other Insurer under any insurance policy entered into before the commencement of the period of insurance;
- iii. any facts disclosed to Us or any other Insurer in any proposal for insurance prior to the commencement of the period of insurance.

2. Contractual liability

Any claim arising from or in connection with:

- i. any contractual liability or assumed liability, unless You would, in any event be legally liable in the absence of such contractual or assumed liability;
- ii. any liability assumed by You under any guarantee or warranty unless You would, in any event be legally liable in the absence of such contractual or assumed liability;

3. Intellectual Properties

Any claim based upon, arising out of, directly or indirectly resulting from, in consequence of unfair competition; passing off; or infringement of patent copyright, design, trademark, service mark, trade name or slogan.

4. Pollution

Any claim in respect of loss or losses directly or indirectly arising out of:

- i. the discharge, dispersal, release, or escape of pollutants,
- ii. the cost of removing, nullifying or cleaning up pollutants, or
- iii. fines, penalties, punitive or exemplary damages arising directly or indirectly out of the discharge, dispersal, release or escape of pollutants.

5. Financial Failure & Trading Debts

Any claim based upon, arising out of, directly or indirectly caused by or in any way connected with any debt of Yours or any guarantee or other undertaking or obligation given by You for a debt.

6. Insolvency

Any claim made against You, where all or part of such claim is directly or indirectly based upon or attributable to Your insolvency or the insolvency of Your suppliers and/or sub-contractors.

7. Fraud and dishonesty

- i. any actual dishonest, fraudulent, criminal, wilful or malicious conduct by You;
- ii. any wilful breach of any statute, contract or duty by You or Your agent(s).

8. Managerial Liability

Any claim directly or indirectly arising from or in connection of Your acting in the capacity of a director or officer of a company, association or other legal entity.

9. Employer's liability

- i. any claim for any bodily injury, sickness, disease, nervous shock, mental disorder or death of any employee of Your or for the destruction or loss or damage to any tangible property belonging to an employee, including loss of use thereof, arising in the course of their employment;
- ii. any claim arising out of any obligation You may have under any workers' compensation, unemployment compensation, employer's liability, disability benefits law or any other similar law.

10. Aggravated, Punitive, Exemplary damages, Fines or Penalties

Any claim arising out of, based upon, attributable to or as a consequence of:

- i. fines, taxes, penalties, exemplary, punitive, liquidated or aggravated damages; or
- ii. the return, restitution, or offset of fees, expenses or costs paid to an Insured; or
- iii. any other damages deemed uninsurable in law

11. Bodily injury / property damage

Any claim in respect of loss or losses arising out of:

- i. bodily injury; or
- ii. property damage

suffered or incurred by any entity or person other than as the direct result of professional services having been or being performed, undertaken or provided by You or on Your behalf.

12. Retroactive date

Any claim directly or indirectly arising from or in connection with any conduct, act, error or omission which has taken place or is alleged to have taken place prior to the retroactive date.

13. USA / Canada exposure

Any claim in respect of loss or losses directly or indirectly arising out of or in connection with:

- i. Your conduct anywhere within the territorial limits of the United States of America or the Dominion of Canada, their territories or protectorates;
- ii. any legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within the United States of America, the Dominion of Canada, their territories and protectorates against You;
- iii. the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal against You having actual or purported jurisdiction within the United States of America, the Dominion of Canada or their territories and protectorates;

14. War

Any claim based upon, arising out of, directly or indirectly resulting from, in consequence of any act of war, invasion, acts of foreign enemies, hostilities or war-like operation (whether war be declared or not), civil war, mutiny, popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, martial law, confiscation or

nationalization or requisition or destruction of or damage to property by or under the order of any Government or public or local authority.

15. Terrorism

Any claim based upon, arising out of, directly or indirectly resulting from, in consequence of any act of terrorism. For the purpose of this exclusion, Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s) committed for political, religious, ideological or similar purpose including intention to influence any government and/or to put the public, or any section of the public, in fear.

16. Nuclear

Any claim based upon, arising out of, directly or indirectly resulting from, in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or component thereof

How is the Premium computed?

Premium rate depends on various factors such as limit of indemnity, nature of business, business sector, revenue, claims experience, optional covers opted for etc.

What are the cancellation provisions under this Policy?

Insured may cancel this *policy* at any time by giving the Insurer a minimum of 15 days' notice in writing stating therein the date & time *Insured* wishes such cancellation to be effective. Provided that there are no *claims* made or *claims* paid under this *policy*, insurer shall refund the premium for the unexpired *period of insurance* based on its customary short-period scale.

The insurer may also cancel this *policy* at any time and such cancellation will take effect 15 days from the time of receipt of notification by the *insured*. Upon cancellation, the insurer shall allow a pro-rata refund of premium for the unexpired *period of insurance*.

How are claims dealt with under these policies?

1. Incident / Claim Notification

Should the Insured become aware that some financial losses, bodily injury or property damages have resulted as a direct consequence of their Professional Activities or on the basis of any professional advice rendered by them / or their employees to their clients or other directly affected third-parties, an immediate notification needs to be provided to the Insurer,

Should the Insureds have received verbal communications, legal notice, court summons, request to appear for arbitration or an enquiry, the same needs to be informed to the Insurer immediately.

Where necessary, the Insured should engage a suitable lawyer to protect their interests & let the Insurer know the full details. Any matter pending in the jurisdiction of any

Court in India needs to be defended suitably by the Insured in consultation with the Insurer, who will closely monitor the progress. The Insurer is not required to defend any action in a court of law or any quasi-legal forum, but the Insurer reserves the right to take over defence when necessary to protect the Interests of the Insured & Insurer.

2. Submission of documents

Upon notification of a **Claim**, the Insurer will issue the relevant claim form to be completed which solicits the necessary details regarding the nature of Financial losses; Bodily Injury, and / or Property Damages as the case may be.

This form must be completed and all documents requested therein must be submitted to the Insurer or Loss Adjuster as soon as possible and in any event not exceeding a period of 15 Calendar days

3 Appointment of Surveyor/ Adjuster

Where deemed suitable, the Company may appoint a Loss Adjuster to assist the Insured and protect the Insurer's interests in dealing with the Claim for damages have been made upon them

4. Steps to mitigate loss

Insureds need to comply with all regulations imposed by any competent authority and take all reasonable precautions to prevent or minimise claims being made against them.

Prohibition of Rebates (Section 41 of the Insurance Act 1938 as amended)

1. No person shall allow or offer to allow, either directly or indirectly as an inducement to any person to take out or renew or continue an insurance in respect of any kind or risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy, accept any rebate except such rebate as may be allowed in accordance with the prospectuses or tables of the Insurer
2. Any person making default in complying with the provisions of this section shall be liable for a penalty, which may extend to Ten Lakh rupees.

Note: The above are only some of the salient features of the Policy, for further details please refer to the complete Policy Wordings; Company website or contact your Insurance Broker