

PROFESSIONAL INDEMNITY INSURANCE POLICY

PROSPECTUS

Why does someone performing Professional Services or Consulting Activities require a 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 all classes 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 / Company Secretaries, etc
- Lawyers / Legal Firms / Dispute Resolution
- 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?

Professional Indemnity Insurance Policies (also often also referred to as *Errors & Omissions 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

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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.

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 1 crore to Rs 10 crores applicable either for each claim & in the aggregate for all claims during the Policy Period.

What are the extensions under this Policy?

This policy has numerous automatic extensions of cover to meet the needs of most professionals. These extensions come with their individual terms & conditions (within the overall ambit of policy terms) and are usually insured up to a sub-limit stated in the Policy Schedule. Such a sub-limit becomes part of (and not in addition) to the Limit of Liability discussed earlier.

1. Advancement of Defence Costs
2. Claim Preparation Costs
3. Continuous Cover
4. Libel, Slander and/or Defamation
5. Emergency Defence Costs
6. Extended Reporting Period
7. Intellectual Property
8. Joint Ventures
9. Loss Of Documents
10. Newly Acquired or Created Subsidiaries

What are the exclusions under this Policy?

1. Anti-Competitive Practices

Any claim based upon, arising out of, directly or indirectly resulting from or in consequence of any contravention of any provisions of the Competition Act, 2002(India) as amended from time to time, or any similar law anywhere in the world regulating monopolization, anti-trust, price fixing, price discrimination, predatory pricing, restraint of trade or similar activities.

2. Asbestos

Any claim based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

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

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

- (a) fines, taxes, penalties, exemplary, punitive, liquidated or aggravated damages; or
- (b) the return, restitution, or offset of fees, expenses or costs paid to an Insured; or any other damages deemed uninsurable in law

4. Contractual liability

Any claim arising from or in connection with:

- (a) any contractual liability or assumed liability, unless the Insured would in any event be legally liable in the absence of such contractual or assumed liability;
- (b) any liability assumed by an Insured under any guarantee or warranty unless the Insured would in any event be legally liable in the absence of such contractual or assumed liability

5. Employer's liability

- (a) any claim for any bodily injury, sickness, disease, nervous shock, mental disorder or death of any employee of the Insured 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;

any claim arising out of any obligation for which the Insured or any carrier as its insurer may be liable under any workers' compensation, unemployment compensation, employer's liability, disability benefits law or any other similar law.

6. Fraud and dishonesty

Any claim directly or indirectly caused by, arising out of or in any way connected with

- (a) any Insured committing or condoning; or allegedly committing or condoning any dishonest or fraudulent act
- (b) any wilful breach of any statute, contract or duty by any Insured or their agent(s); or
- (c) any malicious, criminal or intentional breach of the law

7. Insolvency

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

8. Intellectual Properties

Other than stated in Automatic Extension 7, 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.

9. Licensing inquires

any prosecution, inquiry, hearing, commission or other investigation in relation to the insured failing to be properly licensed, registered or accredited to provide professional services as required by any Acts, rules, regulations or industry codes of practice.

10. Managerial Liability

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

11. Pollution

Any claim based upon, arising out of, directly or indirectly resulting from:

- (a) the discharge, dispersal, release, or escape of pollutants,
- (b) the cost of removing, nullifying or cleaning up pollutants, or
- (c) fines, penalties, punitive or exemplary damages arising directly or indirectly out of the discharge, dispersal, release or escape of pollutants.

12. Personal injury / property damage

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

- (a) personal injury; or
- (b) 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 or on behalf of the Insured.

13. Prior and pending

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

- (a) any facts or circumstances of which the Insured was aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the period of insurance;
- (b) any facts or circumstances reported to an insurer under any insurance policy entered into before the commencement of the period of insurance;
- (c) any facts disclosed to any insurer in any proposal for insurance prior to the commencement of the period of insurance.

14. Related Persons & Entities

Any claim brought or maintained by or on behalf of:

- (a) any Insured or parent company of any Insured; or
- (b) any joint-venture partner of any Insured; or
- (c) any entity within the same group of companies as the Insured; or

any person or entity who, at the time of the act, error or omission giving rise to the claim is a family member of any Insured or controlled by a family member of any Insured unless such claim originates from an independent third-party claimant

15. Retroactive date

Any claim directly or indirectly arising from a wrongful act which has taken place or is alleged to have taken place prior to the retroactive date.

16. Trading Debts

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

17. 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

18. 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.

19. 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.

How is the Premium computed?

Premium rate depends on various factors such as limit of indemnity, nature of business, business sector, revenue with geographical bifurcations, USA & Canada exposure, 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