

Newsletter

April 2010

RG126 – your obligations

If you provide financial services to retail clients, then with effect 1 January 2010, you need to have the higher standard of PI Insurance in place that complies with RG 126.

I have reviewed most IMI policy wordings in the market, and generally they meet the needs of RG126. However, there are a few areas that need extra attention:

- a) Are you purchasing sufficient limit of indemnity? Typically no IMI policy provides cover for defence costs in addition to the limit (they're part of the limit), nor do they provide a reinstatement of the limit. Therefore, it seems that RG126 requires you to purchase double the minimum limit of \$2m e.g. you need to purchase at least \$4m. A further issue is that you need to document and keep on file an analysis of how you arrived at the 'right' limit to purchase. I have worked with a number of my clients to assist in assessing this. As a starting point, see the article from my March Newsletter, which contains some of the factors I consider when determining an appropriate limit of indemnity.
- b) Scope of cover. There are a number of elements that need to be reviewed, but the main item that needs attention is how the policy responds to fraud & dishonesty? All insurers have a general exclusion for criminal, fraudulent, dishonest and malicious conduct. Some Insurers endorse the policy to cover the Insured Entity's legal liability to third parties for fraudulent or dishonest conduct of Directors or Officers, Employees or representatives for whom the Insured Entity is legally liable. For example, two of the leading markets, Chartis and Chubb specifically endorse the cover for RG126. Other Insurers do not endorse it, because they consider their language sufficient in current wording. This needs to be checked on a case by case basis.

You must spend some of your time assessing the quality and quantity of your cover to ensure you are not in breach of RG126 requirements.

Can an Insurers policy wording be amended?

There are more than a dozen Insurers, who can provide PI, D&O and Crime (IMI) insurance for Australian Investment Mangers, each with their own unique policy wording(s). Whilst the basic intent is the same, there is considerable difference between the best policies and the worst policies. Like all insurance policies this will only be apparent in the event of a claim – however, if you are unfortunate enough to be involved in a claim, each difference will be magnified.

However, it may or may not come as a surprise, but IMI insurance is a negotiable product, and almost without exception, every wording can be modified / enhanced. Even the ‘best’ wordings have room for improvement, whether it be narrowing an exclusion, refining a claim condition, or expanding or adding an extension. On a recent renewal, we achieved over 19 amendments to a leading market form (although we also got knocked back on a handful as well). Some of these amendments were of minor value, but others were of higher value.

Whilst some of the enhancements may come at a cost, others can be negotiated in for no additional cost.

Key tip - choose the right Broker!:

1. Don't accept complacency. An Insurer doesn't want to do more work than they have to, and it's rare they will offer a variation to their standard form if they don't have to;
2. To get an improvement, you have to know what to ask for in the first place;
3. You have to know how to ask for it - what arguments to make, and whom to make them to;

Most wordings, with a few exceptions, do a good job of providing cover. However, with varying degrees of effort and cost, you can enhance your policy to be something that will be even more effective in responding to your risk.