Professional Indemnity & Run-Off Insurance

Are you planning to retire shortly, merge or cease trading?

Run-off Insurance and its on-going annual cost for some Insured's can be likened to a "jack in the box" at the time a firm ceases trading or merges with another firm. There is no great mystique to Run-Off Insurance, it is more-so a matter of understanding the "claims made" nature of the cover opposed to "claims occurring" which illustrates the necessity for this run-off cover.

Basis of Cover	Insurance Policy (*examples*)	Explanation
Claims Made	Professional Indemnity, Professional Indemnity "Run Off", Directors and Officers Cover	The insurers policy that is in force on the date you became aware of something which may give rise to a claim and give notice is the insurer who will defend and settle the claim even if the actual work resulting in a potential claim was done at the time you were insured by another insurer.
Claims Occurring	Public Liability, Car & House Insurance	The policy which was in force on the date of the event causing the loss will respond with both defence and indemnity. If you switched insurers since the event it will be the old insurer who will respond.

What is Run-Off insurance?

The claims made nature of Professional Indemnity Insurance means that a professional indemnity policy still needs to be maintained and in force to ensure that you will receive cover should a claim be made against you or your former practice for work undertaken in the past. Run-off cover is a form of insurance which can and should be brought to provide cover for claims arising after a firm or individual has ceased trading. Run-off cover is the conversion of a professional indemnity policy which comes into effect when you or your employees stop trading, and any claims made under it will relate to work carried out before the run- off policy incepted.

Who needs it?

When any professional practice comes to an end, it is essential that it continues to benefit from professional Indemnity cover for claims which may be made after the practice has ceased to trade, in respect of the work which was carried out in the past. There are many reasons why a professional practice may come to an end, sale, merger, acquisition, or it may be the practitioner has just reached a point where they want to cease to trade and either retire or do something else instead. Taking into consideration the "claims made" nature of Professional Indemnity policies, this necessitates the requirement for pract-ices/individuals once they've ceased to trade to ensure they have run-off cover.

Who provides Run –Off insurance?

In most cases, run-off cover is provided by the insurer that covered your professional indemnity policy in the year prior to going into "run off". Unlike standard professional indemnity insurance, it is rarely possible to "shop around" for run-off cover as new insurers are reluctant to take on a run-off policy for a firm that they have not insured prior to closure and for whom they have not collected any premium from over the past years to pay potential claims.

What is the process for obtaining Run-Off insurance?

Prior to ceasing to trade/retiring/merging or whatever reason it maybe that you require run-off cover, please contact Lesley Kerr at Aon to discuss in the first instance. Lesley will be able to discuss the options available to you in terms of policy structure and in addition provide you with advice on fish-hooks to consider from an insurance perspective. On occasions, we have had firms either merge or acquire another firm without giving consideration to Professional Indemnity and the past liabilities of the parties involved leaving the insured firm in a precarious position. Should the firm require run-off insurance mid-term (before your renewal date of 1 August), we will advise your Insurer accordingly and they will endorse your policy to reflect that the firm is in run-off and that cover will not be provided for any advice/ services after that date (the run-off endorsement date). There will be no adjustment in premium mid-term.

At renewal, your Insurer will still require a *No Claims* Declaration to be completed and returned. At this time, renewal will be offered in run-off status.

After the first full renewal year of run-off, premiums should start to show signs of reducing and we would typically anticipate them reducing by c5-10% per annum subject to claims and the market rates not increasing.

Traditionally, run-off insurance is usually maintained for 6 years – some shorter, some longer. However, with the change in the Limitation Act, some firms may now need to give consideration and budget for a longer period given the 15 year longstop period. To date, we have experienced a number of claims for firms in run-off some 6-8 years after the firm ceased to trade.

The duration of maintaining run-off insurance does ultimately become an economic decision for the firm. For many firms, it is a large on-going annual cost to bear. As a result of on-going costs, we have experienced some firms electing to renew their run-off policy for 3-4 years and then making the decision to "run the gauntlet" – albeit a very tough decision for the firm to make given how litigious society has become. Before making the decision to let your run-off policy lapse/expire, it would be prudent to contact Lesley to discuss and explore options in order to reduce this cost.

What is the cost of run-off insurance and how long do I need it?

The problem with run-off insurance is that a premium still needs to be paid each year, even where there is no further income flowing in to the practice to pay it. Generally, the premium in the first year of run-off is the same as the last year of trading (i.e. no discount). The tail of potential liability takes a number of years to show any significant decrease and therefore from an insurer's perspective, there is as much chance of a claim in the first few years of run-off as before.

I intend on leaving/retiring next year and my practice will continue to trade, do I need run-off?

If you are a partner or employee of a firm and you leave or retire, the firm's NZ CA Professional indemnity policy affords automatic on-going cover/ protection for liabilities arising from your previous work undertaken, for as long as that firm maintains Professional Indemnity insurance.

Should the firm cease trading in the future, they will then need to make run-off insurance arrangements.

Lesley Kerr
Executive Director
Aon New Zealand
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