

### Suggested steps to be taken...

Prior to an acquisition and signing the relevant documentation;

1. Please contact Aon to discuss the 'run off' insurance requirements and obtain the appropriate advice on 'run off' policy options/structure. **In the first instance, our advice is always going to be that where possible, you should deter from taking on the responsibility/premium for any past liabilities/insurance policies of the acquired firm and that you document in the agreement that they are to maintain/make arrangements in respect to their own 'run off' insurance requirements.**
2. As part of your due diligence, ensure you ask the practice you are acquiring for a copy of their current PI claims history. It is common practice for Brokers to provide Insured's with a copy of their PI claims history. Do not suffice for verbal confirmation that "we've had no claims", as it may well be that the acquired practice genuinely did not appreciate that they needed to disclose 'notifications' and only responded in terms of 'claims', not fully understanding that notifications will sometimes evolve into actual claims.
3. **Refer to Section 18 of the NZ LAW Risk Management Manual. This provides a comprehensive page of suggestions/advice to consider in addition to contacting your Broker.**

### Disaster Example 1

An Insured recently acquired another practice. As part of the due diligence, our Insured asked the other practice whether they have ever had any PI claims. The practice advised our Insured that they had no claims, only 2-3 precautionary notifications that won't eventuate into anything as 'they did nothing wrong'. Our Insured accepted this verbal confirmation, and accordingly agreed to take on the responsibility for the future 'run off' insurance requirements for the practice they were acquiring. Our Insured essentially took over the management/ownership of the acquired practices existing PI policy including all associated terms/premiums and ultimately excess payments. Some 6 months after taking on the practice, one of the precautionary notifications under the acquired practices PI 'run off' policy evolved into an actual claim resulting in a \$480k settlement. Post this settlement, the acquired practices 'run off' policy came due for renewal and as a result of this claim, their 'run off' insurance renewal premiums and policy excess increased substantially resulting in our Insured 'picking up the tab' for an additional \$41k premium increase which they had not budgeted for as part of the acquisition.

*Note in particular the issue pertaining to the policy excess given our Insured agreed to take over the management/ownership of the acquired practices 'run off' policy."*

### Disaster Example 2

Our Insured firm acquired another practice. As part of the S&P agreement, our Insured agreed to pick up all 'past liabilities' for the practice being acquired. No questions were asked as to whether they had previous claims or to sight their current PI claims history, unfortunately this was not considered.

Our Insured firm contacted us 2 months after the acquisition to advise they had acquired this practice and that they would like to roll the acquired firm's 'run off/past liabilities' into their existing PI policy as the acquired practice's PI renewal was coming up for renewal shortly. In order for our Insured's insurer to consider such a request, they asked to sight a copy of the acquired practice's PI claims history. This was duly provided to the Insurer and it transpired that the acquired practice not only had a trail of paid claims dating back over the last 5 years (albeit minimal payments ranging from \$35k to \$83k), they also had a current claim with legal counsel appointed on it with legal costs incurred to date of \$27k and an indemnity reserve of \$280k. Understandably, the Insurer was not prepared to roll the acquired firm's 'run off/past liabilities' into our Insured's existing PI policy as a result of the claims history. As a result, our Insured was left with no alternative but to renew the acquired practices existing PI policy in its first year of 'run off' resulting in a 35% premium increase (\$23k) primarily as a result of the legal costs incurred to date on the existing claim and taking into consideration the indemnity reserve of \$280k. Our Insured has ended up having to front this cost.

*Again, consideration was not given to who will pay the excess for any new claims or existing notifications that evolve into claims.*