

**CHAPTER 50 SECTION 51****Corporate Practices (Professional Indemnity) Rules\*****Authority and Commencement**

1. These Rules are made by the Council (the Council) of the Hong Kong Institute of Certified Public Accountants (the HKICPA) pursuant to Section 51 of the Professional Accountants Ordinance (Cap. 50) (PAO) and come into operation on 2 August 1996.
- 1A. These Rules are referred by the Accounting and Financial Reporting Council (AFRC) Ordinance, Section 20AAZY Professional indemnity requirements for section 20AAZX(5).

**Citation and Interpretation**

2. These Rules may be cited as the Corporate Practices (Professional Indemnity) Rules, and shall apply to all applicants for, and holders of, current corporate practice registration certificates.
3. In these Rules, unless the context otherwise requires:
  - (a) "corporate practice" means a company which is for the time being registered under Part 2A Division 3 of the AFRC Ordinance;
  - (b) "director" in relation to a corporate practice has the same meaning as a director under the AFRC Ordinance;
  - (c) "involuntary absence", in relation to a member and director of a corporate applicant or corporate practice, means the absence of such person as a result of any extraordinary event(s) or circumstance(s) which are beyond his/her reasonable contemplation or control, and which prevent him/her from attending to the business of the corporate practice;
  - (d) "disqualification", in relation to a member and director of a corporate applicant or corporate practice, means any disqualification from being a director of the corporate applicant or corporate practice by reason of the occurrence of any one of the events set out in the relevant regulation concerning disqualification of directors contained in the applicable Model Articles of Association;
  - (e) "HKICPA PII Master Policy" means the professional indemnity insurance policy with Policy Number PHD/AP1/92 - 103062 effected by the HKICPA (formerly known as the HKSA) acting on behalf of its members on 1 December 1992, or such other professional indemnity insurance master policy as may from time to time be effected by the HKICPA on behalf of its members;
  - (f) "incapacity", in relation to a member and director of a corporate applicant or corporate practice, means any incapacity or senility certified in writing by two qualified medical practitioners that such person is not capable, whether due to illness, old age, accident or otherwise, of carrying on an accountancy practice or the business of a certified public accountant (practising) in a proper and effective way;
  - (g) "practising member" means a certified public accountant holding a current practising certificate as issued under the AFRC Ordinance;

- (h) "principal" in relation to a corporate practice, means a certified public accountant who is a director and member of the corporate practice; and
- (i) "professional business" means all advice given and services performed of whatever nature undertaken in a professional capacity as an accountant.

#### **Compulsory Insurance under the HKICPA PII Master Policy**

4. Each corporate practice shall have a valid and binding contract of professional indemnity insurance under the HKICPA PII Master Policy and any additional binding contract of professional indemnity insurance required to ensure compliance with the minimum requirements set out in Rule 5. The insurance may have cover greater than those requirements.

#### **Requirements as to the Insurance Cover**

5. The requirements for the professional indemnity insurance in Rule 4 are as follows:

(a) *Parties – Insured*

The insured shall include:

- (i) the corporate practice;
- (ii) every director of the corporate practice;
- (iii) every former director of the corporate practice; and
- (iv) in the event of the death, incapacity, or bankruptcy of any person specified under (ii) to (iii) above, the estate or the legal personal representatives of that person.

(b) *Parties – Insurer*

The insurer shall be:

- (i) authorised to carry on insurance business by the Insurance Authority; or
- (ii) authorised or licensed to carry on insurance business by an authority in a country or territory outside Hong Kong and providing the cover through a licensed insurance broker under the Insurance Ordinance (Cap. 41).

(c) *The Insured Profession and Business*

The insurance shall cover all professional business undertaken by a corporate practice.

(d) *The Period of Insurance*

The insurance shall be either:

- (i) for a period of not less than one year; or
- (ii) in the case of insurance placed under the HKICPA PII Master Policy or other scheme which requires all insurances under it to expire on a common expiry

date, for a period expiring on the next common expiry date under that scheme.

(e) *Minimum Limit of Indemnity*

- (i) The minimum limit of indemnity of the corporate practice in relation to each and every single claim during the period of insurance shall not be less than:
- (A) the minimum limit of indemnity of the HKICPA PII Master Policy; or
  - (B) 2½ times its gross fee income for the financial year immediately preceding the beginning of the period of insurance subject to a maximum of HK\$15,000,000; or
  - (C) the amount calculated by multiplying the number of principals in the practice as at the beginning of the period of insurance, by HK\$3,000,000;

whichever is the highest.

- (ii) There may be a self-insured excess for each and every claim but any such excess shall not be more than:
- (A) the amount calculated by multiplying the number of principals of the corporate practice as at the beginning of the period of insurance, by HK\$200,000; or
  - (B) 2% of the gross fee income of the corporate practice for the financial year immediately preceding the beginning of the period of insurance;

whichever is the greater.

- (iii) If as a result of a claim(s), the indemnity available shall fall below the amount determined in (e)(i) above, the policy shall provide automatic reinstatement of cover up to the original amount, subject to aggregate indemnity for all claims in any one insurance period of 12 months of not less than twice the minimum limit of indemnity as determined under (e)(i) above.

(f) *Cover*

- (i) The insurance shall cover civil liability arising out of breach of professional duty or any negligent act, error or omission of an insured providing professional services under a current corporate practice registration certificate and any person at any time employed by the insured.
- (ii) The insurance shall not be cancellable by the insurer for innocent non-disclosure or innocent misrepresentation or by the insured at all.
- (iii) The insurance shall cover the insured against claims arising out of a dishonest and fraudulent act or omission of an insured and any person at any time employed by the insured (notwithstanding any misrepresentation or non-disclosure of such acts or omissions when effecting the insurance) but the insurer need not promise to indemnify any person committing, making or condoning any such dishonest act or omission or misrepresentation or non-

disclosure in relation to it.

- (iv) Where the insurance cover is on a claims made basis, the insurance shall have a retrospective date which shall be no less than seven years before the beginning of the period of insurance; except for corporate practices which have been incorporated for less than seven years, in which case, the insurance shall be retrospective to the date of incorporation.

(g) *Run-off*

If a corporate practice shall cease to be a corporate practice registered under the AFRCO, it shall ensure that run-off insurance will cover liability arising from any circumstances acts errors or omissions occurring in the last seven years prior to the date of cessation of registration, and where the insurance cover is on a claims made basis, the insurance is maintained through a period of not less than seven years after the date of cessation of registration.

**Information to be Provided to the AFRC**

6. If the corporate practice requires insurance in addition to the HKICPA PII Master Policy, it shall obtain a written statement from the insurance broker through whom the additional insurance has been placed, who shall be an licensed insurance broker under the Insurance Ordinance (Cap. 41), or where the insurance is placed directly, from the insurer providing the additional insurance certifying that on the basis of written information supplied to the broker or the insurer as appropriate in a proposal or otherwise by or on behalf of the corporate practice, the terms of additional insurance of the corporate practice comply with the requirements of these Rules.
7. The corporate practice shall provide to the AFRC or its appointed delegate from time to time such information and documents about or in evidence of the corporate practice's professional indemnity insurance as it requests.
8. The corporate practice shall inform the AFRC in writing within 14 days of becoming aware that its professional indemnity insurance, including the insurance referred to in these Rules has expired or been cancelled or exhausted or failed to comply with these Rules unless within that period:
  - (a) the Professional Indemnity Insurance has been renewed or reinstated, or the terms have been amended in accordance with these Rules; or
  - (b) the corporate practice has concluded a valid and binding contract of professional indemnity insurance complying with these Rules.

If after the period of 14 days, the corporate practice does not have insurance as required by these Rules, it shall suspend practice immediately, or comply with conditions imposed by the AFRC failing which the AFRC may take such action under the AFRC Ordinance as it thinks fit.

9. The AFRC may issue current corporate practice registration certificates to applicants or corporate practices who have the required insurance in the form of a cover note and a certification provided by the broker or insurer under the policy of insurance, who are licensed under the Insurance Ordinance (Cap. 41).

**\*Important Note**

These Rules require compulsory professional indemnity insurance for applicants for, and holders of current corporate practice registration certificates. As a practical matter, the compulsory insurance may not be adequate for some applicants, and existing corporate practices. Each applicant, and existing corporate practice should take professional advice from insurance brokers or other advisers so that each can consider what is an adequate type and level of cover for the practice.

The HKICPA shall not be under any liability to any member or any other person arising out of any steps the HKICPA takes or omits to take to ensure that corporate practices have complied with these Rules, unless the act or omission is shown to have been in bad faith.