

TLO Risk Services Limited



arbitration

Professional Indemnity Insurance for
Arbitrators

Professional Indemnity Insurance for Arbitrators/Mediators/Alternative Dispute Resolution Professionals

Is there any need to take out insurance cover?

Qualified immunity is the most common approach to the potential liability of arbitrators and arbitral institutions, which means arbitrators and institutions are immune from negligent acts or omissions during the arbitration unless there is bad faith or gross negligence. For example, Article 40 of the ICC Rules of Arbitration provides that arbitrators (and others, including the Court and its members) shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent that such limitation of liability is prohibited by applicable law.

Courts have routinely held that arbitrators are immune from legal action with respect to acts performed by them in the exercise of their functions.

This immunity applies to contractual liability that may arise out of the arbitration agreement, and to tort liability that may arise from the arbitrator's acts or omissions.

However, ultimate immunity from liability does not necessarily guarantee immunity from legal action which can be time-consuming and expensive to defend; therefore an increasing number of ADR professionals are choosing to take out Professional Indemnity cover to protect against this possibility.

A very recent claims example

The members of an arbitration tribunal sitting in London have been sued in civil proceedings pending before a Nigerian court. The tribunal is dealing with a dispute in which the respondent has refused to appear, and in respect of which it has now commenced the legal proceedings against the claimant, the members of the tribunal, and the arbitral institution. They claim damages on the grounds that the commencement of arbitration by the claimant in the course of the execution of an underlying contract between the claimant and the defendant, without first complying with certain conditions precedent, amounted to a breach of the contract. The tribunal needed to take local legal advice in connection with this matter which was paid for by the insurers of those members who had cover.

Types of Cover Available

For a self-employed barrister with a practising certificate, Arbitration work is covered automatically by Bar Mutual – provided the work is appropriately declared. In the claim matter above, one of the members was insured with Bar Mutual.

It is worthy of note that the rate of premium for Arbitrator, Umpire and Mediator work under Bar Mutual increased by 100% (from .25% to .5%) in the 18/19 insurance year. Rate increases are generally driven by a combination of claims and premium income.

For full-time arbitrators who do not hold a practising certificate, Professional Indemnity cover can be sourced in the open insurance market. Premiums are individually underwritten – and depend on the value of fees, where those fees originate and whether there is USA/Canadian work (and therefore USA policy jurisdiction included).

Below are some recent examples as a guide:

Annual Fee Income	Split of Fees	Limit of Indemnity	Premium
£130k	£130k UK	£1m	£1,750
£130k	£130k UK	£5m	£2,500
£200k	£150k UK £50k RoW No USA	£5m	£2,750
£200k	£150k UK £50k USA	£5m	£3,750
£300k	£250k UK £50k USA	£5m	£4,500
£400k	£200k UK £180k RoW No USA	£5m	£3,500

TLO currently arrange cover for a wide range of full time Arbitrators, and the limits of cover selected are generally in the range of £1m to £5m, with £10m being the highest level of cover. An excess of between £1,000 and £5,000 per claim typically applies – but other than in the case of the USA, an excess would only apply to a damages award, and does not apply to defence costs.

The limits of indemnity are underwritten on an “any one claim” basis with costs and expenses included in addition to the limit. Where USA cover is included, the limit of indemnity is aggregated over the year and costs are included within and not in addition to the limit. For the US, the excess applies to defence costs.

Policies are individually underwritten and depend on individual circumstances – so the costs above are provided merely as a guide.

In order to obtain a quotation, a short proposal should be completed, including a CV or career summary and a copy of any standard terms and conditions operated under.

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Professional Indemnity Insurance Proposal

ARBITRATORS / MEDIATORS / CONCILIATORS

This Proposal Form should be completed, signed and dated by a Principal of the current Proposer. If you require additional space to complete your answers to each question then please use your own letterhead and date and sign each additional page. Completion of the Proposal Form does not bind you or the Insurer to enter into any contract of insurance. If you have a brochure about your firm's operation(s), please forward it with this application. You should be aware that the completed Proposal Form along with all additional information provided will form part of the Contract of Insurance with the Insurer. All facts material to the proposed insurance must be disclosed fully and truthfully and to the best of your knowledge and belief. Any facts given which are knowingly false or misleading may make the policy null and void. In addition to the information contained in your proposal form including all supporting documentation, if you are aware of any other information which you consider may alter, influence or prejudice the Insurer's appraisal of the risk being proposed, you must disclose this information in conjunction with this Proposal Form. If such "material" information is not disclosed at the same time as the completion of the Proposal Form, such non-disclosure may prejudice the Proposer's rights to indemnity under the policy. A material fact is one which may influence the Insurer's assessment or acceptance of the risk being proposed. If uncertain as to what may constitute a material fact, please consult us.

We will seek quotations based on the following Demands & Needs unless you confirm by amendment below

Overall Cover Requirement	You require Professional Indemnity to cover loss resulting from any claim for any civil liability which arises from performance or failure to perform your professional services
Cost	No premium targets have been identified
Policy Terms & Conditions	Negotiation based on standard policy terms or conditions unless otherwise specified

(1) Name of Applicant:

Name(s) of firm(s) to be insured:

Principal Address:

Postcode:

Date Established:

Website Address and Email:

Number of Employees:

Please provide a summary of your business activities/proposed business activities – please include as much detail and narrative as possible of the nature of work undertaken:

If this proposal relates to new insurance, you **must** also enclose a copy of your CV or career summary plus any relevant supporting literature

(2) ARBITRATION FEES

Please provide details of the Proposers gross fees received in the last two financial years and the estimated fees for the forthcoming year. If this is a new start up, please provide estimated figures for the forthcoming year

For clients based in:	Past Year	Current Year	Forthcoming Year
United Kingdom	£	£	£
Europe	£	£	£
USA or Canada	£	£	£
Other Countries (please specify)	£	£	£
Total Fees	£	£	£

Financial Year End Date

(3) MEDIATION/CONCILIATION FEES

Please provide details of the Proposers gross fees received in the last two financial years and the estimated fees for the forthcoming year. If this is a new start up, please provide estimated figures for the forthcoming year

For clients based in:	Past Year	Current Year	Forthcoming Year
United Kingdom	£	£	£
Europe	£	£	£
USA or Canada	£	£	£
Other Countries (please specify)	£	£	£
Total Fees	£	£	£

Financial Year End Date

(4) Please identify the sums in dispute (taking into account claim and counterclaim) in the three largest awards made by the Proposer in the last three calendar years

Year	Area/Description of Dispute	Seat	Sums in Dispute	Award

(5) What types of agreement (e.g. reinsurance, maritime carriage, bilateral investment treaty etc) gave rise to the disputes handled by the Proposer as Arbitrator/Mediator/Conciliator in the last financial year, expressed as a % of gross fee income

	£	%
	£	%
	£	%
	£	%
	£	%
Total	£	100%

(6) Please provide details of the three largest contracts the Proposer has worked on since establishment

Name of client	Nature of services provided	Fees charged
		£
		£
		£

(7) Do you operate under a standard terms and conditions of engagement/appointment? If yes, please include a copy with this proposal.

If appropriate, please expand below, explaining situations and the extent to which non-standard terms are used :

(8) Are you connected (financially) with any other business or concern, or a member of a consortium, or have you entered into any joint ventures?

(9) In the last six years have any claims been made against you?

(10) Are you, having made full enquiries, aware of any circumstances which may give rise to a claim against you?

(11) In the last six years, have any complaints been made against you or any disciplinary proceedings been brought by any regulatory body?

(12) Has the Proposer at any time been refused similar insurance, or had any policy cancelled or voided at any time?

(13) Has any director, manager, partner or trustee of the Proposer or any person insured or proposing for insurance
 (i) been convicted, or charged but not yet tried, of any criminal offence other than a motoring offence?
 (ii) been declared bankrupt, gone into insolvent liquidation, or been the subject of receivership or an administration order?

If you have answered Yes to any of the questions above, please provide details below :

For what limit(s) of indemnity do you require terms?

£	£	£
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For what excess(es) do you require terms?

£	£	£
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(14) Policy Jurisdiction Required

UK only	
European Union	
Worldwide excluding USA/Canada	
Worldwide including USA/Canada	

Supplementary Information

Declaration

I/We understand that the information I/we provide and seen throughout will be used in deciding the price charged by the Insurer for the risk and whether the Insurer will accept the application. I/We declare that I/we after a reasonable search have informed the Insurer of all facts which are likely to influence the Insurer in the acceptance or underwriting of my/our insurance. I/We declare that to the best of my/our knowledge or belief the particulars and statements given in this application and any other documentation and information provided in connection with this application is true and complete and this application, declaration, documentation and information shall be the basis of the contract between myself/ourselves and the Insurer. I/We accept that if I am/we are in doubt whether any fact may influence the Insurer I/we should disclose it.

I/We declare that the above answers, statements, particulars and additional information are true to the very best of the knowledge and belief of the Proposer. After full enquiry, I/We also confirm that I/We have disclosed all information and material facts that may alter the insurers view of the risk, or affect their assessment of the exposures that they are covering under the policy. I/We understand that all answers, statements, particulars and additional information supplied with this proposal form will become part of and form the basis of the policy

Signed:	<input type="text"/>	Date:	<input type="text"/>
Printed:	<input type="text"/>	Position:	<input type="text"/>

Attachments Included with this proposal

Curriculum Vitae Products/Services Literature Standard Terms & Conditions Other Relevant Information

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