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CCBE questionnaire on professional indemnity insurance for lawyers requesting registration under the Establishment directive (98/5/CE)

Introduction

This questionnaire assumes that the lawyer requesting registration under the Establishment Directive (98/5/EC) is required to take out professional indemnity insurance through either law or professional regulation in his/her Member State. If that is the case, Article 6 §3 of the Directive permits the lawyer to have existing home professional indemnity insurance taken into account in the host state.

If there is no such obligation, the lawyer will have to follow host State rules alone regarding insurance for professional activities pursued in its territory.

The following questions might be useful for the host Bar or Law Society when examining the situation of the applicant regarding equivalence of the existing insurance policy in his/her home state in terms of the conditions and extent of cover.

It should help them to liaise with corresponding bodies in the home state of the applicant and to take a decision regarding Article 6 §3 of the directive in relation to:

- exemption of the obligation to take out a PI insurance equivalent in the host State or not;
- if so, full or partial exemption of this obligation.

These questions will need to be answered by the individual lawyer with the help of the insurer and/or broker from the home State as each answer should refer precisely to provisions in the existing insurance policy.

As well as evidence of existing professional indemnity insurance, the host bar or law society might also request certain extracts from home rules requiring professional indemnity cover, or requiring compliance with the CCBE Code, as well as the insurance policy, plus an authenticated translation of it into the language of the host Member State.

Please find in the annex the text of Article 6§3 of the Directive, plus CCBE Guidelines. The text of the Directive can be found on the CCBE website (www.ccbe.org).

1) Personal data:

First Name: _____ Last Name: _____

Address of practice in Host country: _____
_____Address of practice in Home country: _____

Date of Birth: _____

Nationality/Nationalities: _____

Home Bar or Law Society (contact details): _____
_____**2) Structure of practice:****a) In your home state:**2.a.1) Individual in private practice? Yes No 2.a.2) Firm? Yes No 2.a.3) Under what legal entity? (Please refer to the type of legal entity in the language of your home state).

_____2.a.4) In partnership with non-lawyers? If so, what kind of non-lawyers?

_____**b) In your host state :**2.b.1) Individual in private practice? Yes No 2.b.2) Firm? Yes No 2.b.3) Under what legal entity do you propose to practice? (Please refer to the type of legal entity in the language of the host state)

_____2.b.4) In partnership with non-lawyers? If so, what kind of non-lawyers?

3) Existing insurance in home state:

- 3.1) Existence of professional indemnity cover? Yes No
- 3.2) What is the sum insured in Professional Indemnity?

- 3.3) Is it for each and every claim, or is it on an annual (aggregate) basis, or is there both a limit for each and every claim and an annual aggregate limit?

- 3.4) Is there cover for defence costs? Yes No ;
If so, is this within the limit of indemnity? Yes No ;
- 3.5) What is the level of self-insured retention? Does it apply to defence costs?

- 3.6) Is the insurance on the basis of Claims-made / occurrence or acts committed?

- 3.7) For how long does cover continue after the practice ceases?

- 3.8) Is there any insurance or any other mechanism which covers claims arising from the handling of third parties funds? If yes, please describe.

- 3.9) Will the cover extend to the individual in private practice in the host Member State? Yes No
- 3.10) Will the cover extend to the firm's practice in the host Member State? Yes No
- 3.11) Does the cover extend to all legal entities through which the firm is practicing in the host Member State? Yes No
- 3.12) Does the cover extend to all activities permitted under Article 5 of the Establishment Directive to a lawyer from your Member State who is established in another Member State (practice of International law, European law, home and host law)? Yes No
- 3.13) Are there any restrictions or limitations on the scope of coverage if a claim is brought in host Member State courts?

- 3.14) What are the exclusions in your home cover? Please list all exclusions mentioned on your insurance policy or attach the relevant part of your policy.

Annex

1. Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained :

Article 6 paragraph 3: *“The host Member State may require a lawyer practising under his home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory. Nevertheless, a lawyer practising under his home-country professional title shall be exempted from that requirement if he can prove that he is covered by insurance taken out or a guarantee provided in accordance with the rules of his home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the competent authority in the host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State. »*

2. Guidelines on the implementation of the Establishment directive (98/5/EC of 16th February 1998) issued by the CCBE for Bars and Law Societies in the European Union

« Article 7 Professional liability insurance

The bodies responsible in each Member State for arranging and/or providing professional indemnity insurance as mentioned in Article 6.3 of the Directive shall liaise with corresponding bodies in other Member States to ensure that, so far as possible, insurance arrangements made by a lawyer in one Member State are respected and recognised in another Member State both before and after integration under Article 10 of the Directive, to avoid problems relating to double premiums and double insurance. »